

No. 15352

United States
Court of Appeals
for the Ninth Circuit

COUNTY OF SAN DIEGO and CITY OF SAN
DIEGO,

Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

CHARLES W. CARLSTROM, SOUTHERN
CALIFORNIA CHILDREN'S AID FOUN-
DATION, INC., a corporation, SOUTHERN
CALIFORNIA DISTRICT COUNCIL OF
THE ASSEMBLIES OF GOD, INC., a cor-
poration and THE SALVATION ARMY,

Appellants,

vs.

COUNTY OF SAN DIEGO,

Appellee.

Transcript of Record

Appeals from the United States District Court for the
Southern District of California,
Southern Division



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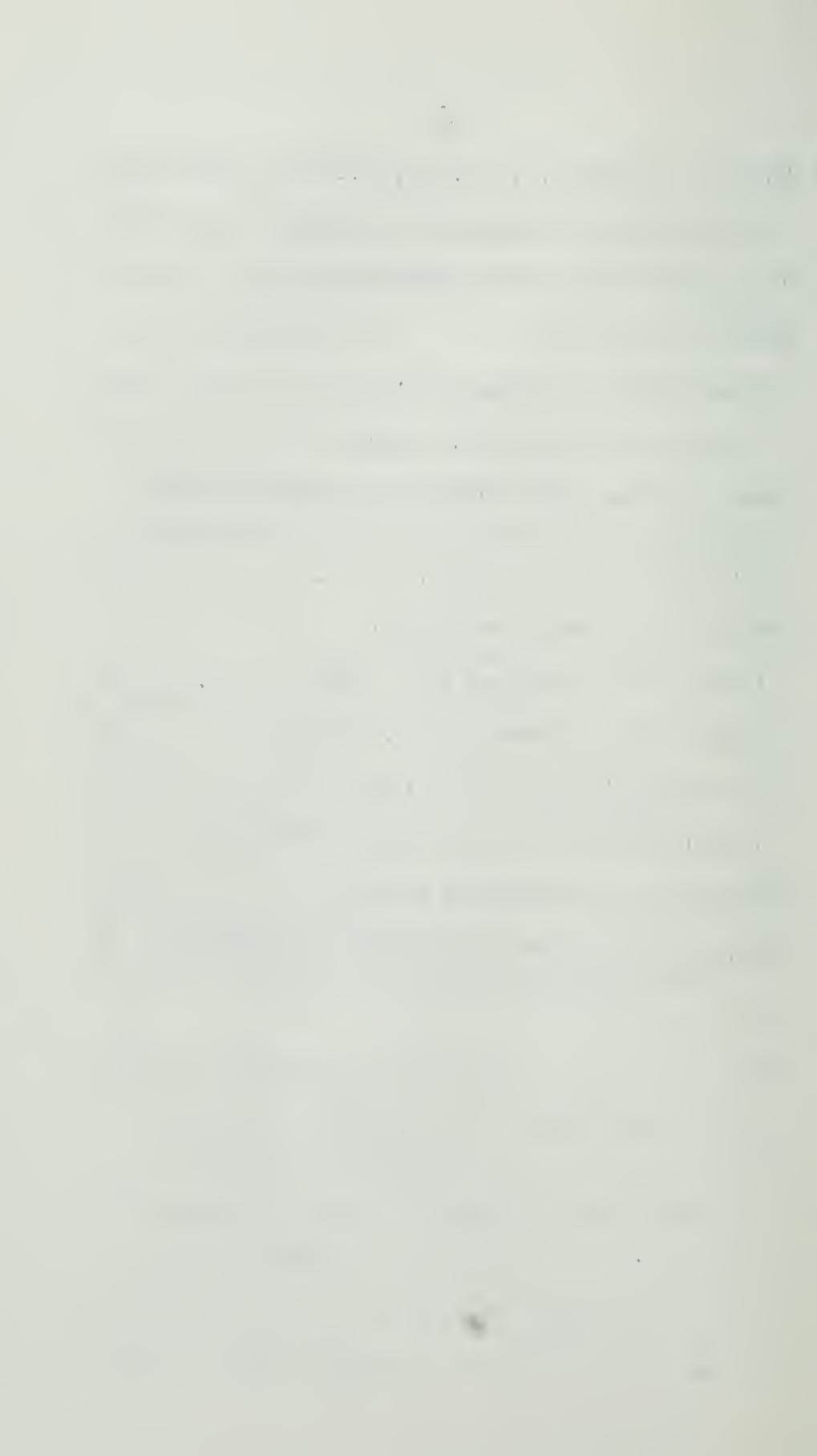
[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

FOR APPELLANT:

JAMES DON KELLER,
District Attorney,
For County of San Diego;

DUANE J. CARNES and
CARROLL H. SMITH, Deputies,
302 Civic Center,
San Diego 1, California,

JEAN F. DuPAUL,
City Attorney,
For City of San Diego,

ROBERT T. SJOGREN, Deputy,
271 Civic Center,
San Diego 1, California,

HILL, FARRER & BURRILL,
Attorneys for Charles W. Carlstrom,
10th Floor, Equitable Life Building,
411 West Fifth Street,
Los Angeles 13, California,

PROCOPIO, PRICE, CORY & SCHWARTZ,
PAUL, HASTINGS & JANOFSKY,
Attorneys for Southern California
Children's Aid Foundation, Inc.,
510 South Spring Street,
Los Angeles 13, California,

PAUL, HASTINGS AND JANOFSKY,
Attorneys for Southern California
District Council of the Assemblies of God, Inc.,
510 South Spring Street,
Los Angeles 13, California,

NAMES AND ADDRESSES OF ATTORNEYS
(Continued)

RUBIN AND SELTZER,
Attorneys for the Salvation Army, a California
Corporation, and the Salvation Army, a New
York Corporation,
935 Bank of America Building,
San Diego 1, California.

FOR APPELLEES:

PERRY W. MORTON,
Assistant Attorney General,

ROGER P. MARQUIS,
A. DONALD MILLER,
Attorneys,
Department of Justice,
Washington 25, D. C.

LAUGHLIN E. WATERS,
United States Attorney,

JOSEPH F. McPHERSON,
GEORGE F. HURLEY,
Assistant United States Attorneys,
Lands Division,
821 Federal Building,
Los Angeles 12, California. [1]*

* Page numbers appearing at foot of page of original Transcript of Record.

United States District Court, Southern District
of California, Southern Division

Civil No. 1506-SD

UNITED STATES OF AMERICA,

Plaintiff,

vs.

70.39 ACRES OF LAND, MORE OR LESS, in
San Diego County, State of California; GREG-
ORY ELECTRIC COMPANY, an Illinois
Corporation, et al., Defendants.

FIRST AMENDED COMPLAINT
IN CONDEMNATION

1. Now comes the plaintiff, United States of America, by Laughlin E. Waters, United States Attorney, Joseph F. McPherson and George F. Hurley, Assistant United States Attorneys, and files this, its first amended complaint in condemnation.

2. This is an action of a civil nature brought by the United States of America at the request of James H. Douglas, Under Secretary of the Air Force, by direction of the Secretary of the Air Force, and of the Attorney General of the United States of America, for the taking of property under the power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

3. The authority for the taking is the Act of

Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a) and acts supplementary thereto and amendatory thereof, and [2] under the further authority of the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257); the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518, 50 U.S.C. 171), which acts authorize the acquisition of land for Military purposes; the Act of Congress approved August 12, 1935 (49 Stat. 610, 611; 10 U.S.C. 1343a, b and c), which act authorized the acquisition of land for Air Force Stations and Depots; the National Security Act of 1947 approved July 26, 1947 (61 Stat. 495); the Act of Congress approved July 10, 1952 (Public Law 488, 82nd Congress) and the Act of Congress approved June 30, 1954 (Public Law 458, 83rd Congress), which said acts authorize acquisition of the land and appropriated funds for such purposes.

4. The use for which the property is to be taken is to provide for the defense of the United States of America and for the military purposes of the Department of the Air Force in connection with Plancor No. 20, in San Diego County, State of California, and for such other uses as may be authorized by Congress or by Executive Order, and said land has been selected under the direction of the Secretary of the Air Force for acquisition by the United States of America for the uses and purposes aforesaid.

5. The estates in the property to be acquired for said public uses, identified in paragraph 6 and described in Exhibits "A" and "B" following, are as follows:

(a) The right of exclusive use and occupancy for a term of years commencing May 1, 1953 and ending with the filing of this first amended complaint in condemnation and the declaration of taking referred to in paragraph 12 following, subject, however, to existing easements for public roads [3] and highways, public utilities, railroads, and pipe lines, and to such rights and reservations as are set out in said Exhibit "A".

(b) Upon the conclusion of the exclusive use and occupancy described in sub-paragraph (a) above, the estate taken is the fee simple title, subject to existing easements for public roads and highways, for public utilities, for railroads and pipe lines.

6. (a) The properties taken by this action for the use and occupancy described in sub-paragraph (a) of paragraph 5 above are segregated into separate parcels designated by separate parcel numbers and in such manner are more particularly described in Exhibit "A" hereto attached and by this reference made a part hereof.

(b) The properties taken in fee simple, described in subparagraph (b) of paragraph 5 above, are likewise, for convenience, segregated into parcels, designated by separate parcel numbers, and in such

manner are more particularly described in Exhibit "B" hereto attached.

7. The persons known to plaintiff to have or to claim interests in the properties described in Exhibit "A" are named in Plaintiff's Statement of Apparent Interest of Defendants at the end of Exhibit "A".

8. The persons known to plaintiff to have or to claim interests in the properties described in Exhibit "B" are named in said exhibit immediately following the legal description of each such parcel.

9. The City of San Diego, County of San Diego, and State of California may have or claim interests in the property identified in paragraphs 5 and 6 above, by reason of taxes and assessments due and recoverable, and for other governmental charges levied or assessed pursuant to law, [4] and said public bodies are made defendants to this action.

10. In addition to the persons named herein, there are or may be others who have or may claim to have some interests in the properties taken and whose names are unknown to plaintiff and such persons are made parties to this action under the designation, "Unknown Owners", and the provisions of this paragraph 10 apply to the real estate described in Exhibits "A" and "B" following.

11. That, on April 29, 1953, plaintiff filed its original declaration of taking and, thereafter, on July 30, 1954, filed its supplemental declaration of

taking, of the estates and interests described in sub-paragraph (a) of paragraph 5, above, and deposited into the registry of the court the sums of money identified in said declaration of taking and supplemental declaration of taking as the estimated just compensation for the condemnation and taking by the plaintiff of the exclusive use and occupancy of the properties therein described, commencing May 1, 1953 and terminating June 30, 1955. The right of exclusive possession is and has been continuously vested in the United States during said period to the date hereof, though actual possession of portion of properties has been deferred. Immediate possession of all the properties condemned is now required.

12. Simultaneously, with the filing of this first amended complaint in condemnation, the United States of America has filed its declaration of taking, dated June 1, 1955, and executed by James H. Douglas, Under Secretary of the Air Force, by the direction of the Secretary of the Air Force of the fee simple estate, subject to existing easements for public roads and highways, for public utilities, for railroads and pipe lines in the properties described in said declaration of taking and in Exhibit "B" hereto attached, [5] and in conjunction therewith has deposited into the registry of this court the sum of \$2,600,000.00, which is estimated by the Secretary of the Air Force on behalf of plaintiff to be the just compensation to be paid for the condemnation of the properties described in Exhibit

"B" hereof, for the estate described in this first amended complaint in condemnation and in the declaration of taking, and the Secretary of the Air Force, acting by and through the Under Secretary thereof, has stated that he is of the opinion that the estimated award for said properties probably will be within any limits prescribed by law on the price to be paid therefor.

Wherefore, plaintiff requests that just compensation for the taking of the interests and estates hereinabove described in the properties described in Exhibits "A" and "B", be ascertained and awarded; that the Court enter an order confirming the right of exclusive possession of the properties in the United States of America in accordance with the taking of the fee estate therein subsequent to the date of filing this first amended complaint in condemnation and the declaration of taking, and for such other and further relief as may be meet and proper in the premises.

Dated June 15, 1955.

UNITED STATES OF AMERICA,
By LAUGHLIN E. WATERS,
United States Attorney,
JOSEPH F. McPHERSON,
GEORGE F. HURLEY,
Assistant United States Attorneys,

/s/ By GEORGE F. HURLEY,
Its Attorneys. [6]

Plaintiff demands a trial by jury.

UNITED STATES OF AMERICA,
By LAUGHLIN E. WATERS,

United States Attorney,
JOSEPH F. McPHERSON,
GEORGE F. HURLEY,

Assistant United States Attorneys,
/s/ By GEORGE F. HURLEY,
Its Attorneys. [7]

[Endorsed]: Filed June 16, 1955.

[Title of District Court and Cause.]

DECLARATION OF TAKING

To the Honorable The United States District Court:

I, the undersigned, James H. Douglas, Under Secretary of the Air Force of the United States of America, do hereby make the following declaration by direction of the Secretary of the Air Force:

1. (a) The land hereinafter described is taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a) and acts supplementary thereto and amendatory thereof, and under the further authority, of the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257); the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518, 50 U.S.C. 171), which acts authorize the acquisition of land for Military purposes; the Act of Con-

gress approved August 12, 1935 (49 Stat. 610, 611; 10 U.S.C. 1343a, b and c), which act authorized the acquisition of land for Air Force Stations and Depots; the National Security Act of 1947 approved July 26, 1947 (61 Stat. 495); the Act of Congress approved July 10, 1952 (Public Law 488, 82nd Congress) and the Act of Congress approved June 30, 1954 (Public Law 458, 83rd Congress), which said acts authorize acquisition of the land and appropriated funds for such purposes. [77]

(b) The public uses for which said land is taken are as follows: The said land is necessary adequately to provide for defense and Military purposes and other Military uses incident thereto. The land has been selected under the direction of the Secretary of the Air Force for acquisition by the United States for use in connection with Plancor 20, in San Diego County, State of California, and for such other uses as may be authorized by Congress or by Executive Order.

2. A general description of the land being taken is set forth in Schedule "A", attached hereto and made a part hereof, and is a description of the same land described in the petition in the above-entitled cause.

3. The estate taken for said public uses is the fee simple title, subject to existing easements for public roads and highways, for public utilities, for railroads and pipe lines.

4. Plans showing the land taken are annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by the undersigned as just compensation for the said land, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said land is set forth in Schedule "A" herein, which sum the undersigned causes to be deposited herewith in the registry of the Court for the use and benefit of the persons entitled thereto. The undersigned is of the opinion that the ultimate award for said land probably will be within any limits prescribed by law on the price to be paid therefor.

In Witness Whereof, the undersigned, the Under Secretary of the Air Force, hereunto subscribes his name by direction of the Secretary of the Air Force, this 1st day of June, A.D. 1955, in the City of Washington, District of Columbia.

/s/ JAMES H. DOUGLAS,

Under Secretary of the Air Force.

[Endorsed]: Filed June 16, 1955.

[Title of District Court and Cause.]

ANSWER

Comes now defendant County of San Diego, a political subdivision of the State of California, and in answer to plaintiff's first amended complaint herein admits and alleges as follows:

1. Admits the allegations of paragraph 9 of said first amended complaint that the County of San Diego claims an interest in the real property iden-

tified in paragraphs 5 and 6 of said first amended complaint by reason of taxes and assessments due and recoverable.

2. That this answering defendant has an interest in the real property described in plaintiff's first amended complaint and therein designated Tract A-100, said interest being a lien for The City of San Diego, County of San Diego and School District taxes for the years 1950 to 1954, both inclusive, together with penalties and interest thereon, which, at the time of the filing of this answer, amounts to the total sum of \$54.67.

3. That this answering defendant claims an interest in each and every parcel and tract of real property described in said first [120] amended complaint, said interest being a lien for The City of San Diego, County of San Diego, and School District taxes for the fiscal year 1954-55, which said taxes became a lien against said real property on the first Monday of March, 1955; that the amount of said taxes which became a lien on the first Monday of March, 1955 is not now known and is not yet due and payable; that the amount thereof will be ascertainable on or about October 1, 1955; that this answering defendant reserves the right to supplement this answer to set forth the specific amount of said taxes when the amount thereof is ascertainable.

Wherefore, Defendant County of San Diego prays that the court determine the amount of compensation and award of damages to be awarded for

the taking of each parcel and tract of real property described in plaintiff's first amended complaint and that the court ascertain the amount of taxes due, owing and payable to said defendant County of San Diego and order the payment thereof out of the compensation or damages awarded.

Dated August 5, 1955.

JAMES DON KELLER,

District Attorney and County Counsel in and for
the County of San Diego, State of California,

/s/ By ROBERT G. BERREY,
Deputy. [121]

[Endorsed]: Filed August 10, 1955.

[Title of District Court and Cause.]

APPEARANCE

To United States of America, Plaintiff, and to its
Attorneys, Laughlin E. Waters, United States
Attorney, Joseph F. McPherson and George F.
Hurley, Assistant United States Attorneys:

You and Each of You place take notice that
defendant County of San Diego, a political subdivision
of the State of California, has filed an appearance
in the above entitled action; that said defendant
County of San Diego claims an interest
in each and every parcel and tract of real property
described in plaintiff's first amended complaint

[Title of District Court and Cause.]

SUPPLEMENTAL ANSWER

Comes now defendant County of San Diego, a political subdivision of the State of California, and supplements the answer heretofore filed and admits and alleges as follows:

1. That this answering defendant has an interest in each and every parcel and tract of real property described in plaintiff's first amended complaint, said interest being a lien for The City of San Diego, County of San Diego, and School District taxes for the fiscal year 1955-56, which said taxes became a lien against said real property on the first Monday of March, 1955; that the amount of said taxes which became a lien on the first Monday of March, 1955 is as follows:

Tract	San Diego Parcel No.	Tax Due	San Diego Co. Account No. (55-56)
A-100	10-123-3	\$ 6,716.86	77200
A-100	10-123-5	9.85	77201
A-101	10-122-1A & 4*	24,288.26	77195-1
A-101	10-122-1A & 4*	22,297.96	77195-4
A-102 &			
A-103	10-121-2	56,782.26	77195
A-104	10-120-3	50,202.15	77191
A-105	10-120-5	2,268.11	77193
A-106	10-120-2	117.65	77190
A-107	10-121-1X2	3,445.90	77195-3
A-108	10-122-2 &	3,604.21	77197
	10-123-1 (Void on 55-56 roll)		77198
A-109	10-120-1	1,751.28	77189

	San Diego Parcel No.	Tax Due	San Diego Co. Account No.
Tract			(55-56)
A-109	10-120-4	7,116.03	77192
A-109	10-121-1X2	3,445.90	77195-3
A-109	10-121-4 (Not on 55-56 roll S.D. owned)		
A-109	10-122-2	3,604.21	77197
A-109	10-123-1 & 9	6,416.25	77195-2
A-109	10-123-2	1,173.48	77199
A-109	10-123-7 (Not on 55-56 roll S.D. owned)		
A-110	10-123-1 & 9	6,416.25	77195-2
A-111	10-123-1 & 9	6,416.25	77195-2
A-112	10-121-2	56,782.26	77195
A-113	10-120-1	1,751.28	77189
A-113	10-121-1X2	3,445.90	77195-3
A-113	10-121-2	56,782.26	77195
A-114 to			
A-118, Inc.	10-120-1	1,751.28	77189
B-200	10-124-5A	304.00	77208
B-201	10-124-5X1	8,022.78	77207

that said amounts are subject to a 6% penalty as of December 12, 1955, except Tract B-200;

2. That in addition to the amounts hereinbefore alleged, this answering defendant has an interest in the real property described in plaintiff's first amended complaint and therein designated Tract A-100, said interest being a lien for The City of San Diego, County of San Diego, and School District taxes for the years 1950 to 1954 both inclusive, together with penalties and interest thereon, which at the time of the filing of this supplemental answer amounts to the total sum of \$54.23.

Wherefore, defendant County of San Diego prays that the court determine the amount of compensation and award of damages to be awarded for the taking of each parcel and tract of real property described in plaintiff's first amended complaint and that the court ascertain the amount of taxes due, owing and payable to said defendant County of San Diego and order the payment thereof out of the compensation or damages awarded.

Dated December 30, 1955.

JAMES DON KELLER,

District Attorney and County Counsel in and for the County of San Diego, State of California,
/s/ By JOSEPH B. HARVEY,

Deputy. [127]

Affidavit of Service by Mail attached. [128]
[Endorsed]: Filed January 3, 1956.

[Title of District Court and Cause.]

MOTION OF PLAINTIFF FOR A RULE TO SHOW CAUSE DIRECTED TO THE DISTRICT ATTORNEY AND THE BOARD OF SUPERVISORS OF SAN DIEGO COUNTY, AND THE CITY ATTORNEY OF THE CITY OF SAN DIEGO, WITH RESPECT TO CANCELLATION OF TAXES, OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT THAT SAID COUNTY TAKE NOTHING BY ITS ANSWER

Comes now plaintiff, United States of America,

by Laughlin E. Waters, United States Attorney, and Joseph F. McPherson and George F. Hurley, Assistant United States Attorneys, and files this, its motion of plaintiff for a rule to show cause why the court should not enter an order directing the District Attorney of San Diego County (1) to lodge with the Board of Supervisors of said County, his consent to the adoption by said board, of a resolution directing the county auditor to cancel the 1955-1956 general taxes and the delinquent taxes described in the Supplemental Answer of defendant County of San Diego, upon all of the property acquired in fee title by the United States by its Declaration of Taking filed herein June 16, 1955, and (2) to request and procure, or cause to be transmitted to said Board of Supervisors, the consent of the City Attorney of the City of San Diego to the adoption of a resolution [129] by said Board of Supervisors, directing the auditor of the County of San Diego to cancel said taxes insofar as the said city is concerned, and a like order directed to the said Board of Supervisors to vacate and set aside its order denying the petition of the United States of America for the cancellation of said 1955-1956 general taxes and the delinquent taxes on a portion of said property as described in the Supplemental Answer of said County, and to consider and adopt a resolution directing the said auditor to cancel said taxes and, further, that said district attorney, city attorney and Board of Supervisors report to said court on a day certain of their action with respect thereto, or, in the alternative, for a

summary judgment against defendant County of San Diego that it take nothing by its Answer and Supplemental Answer, upon the ground that from its said Answer and Supplemental Answer it appears affirmatively that the said County of San Diego is not entitled to receive any part of the just compensation to be paid for the condemnation and taking of the several parcels of land involved in this action, and in support thereof alleges the following:

(a) Plaintiff acquired the full fee simple title to each and every of the parcels enumerated and identified in the Supplemental Answer of the defendant County of San Diego by a Declaration of Taking, filed by plaintiff in the above entitled cause on June 16, 1955, which Declaration of Taking specifically described said parcels and the estate taken by the plaintiff therein, and there was likewise deposited into the registry of the court the sum of \$2,600,000.00, in accordance with the estimate of the Secretary of the Air Force made in said Declaration of Taking, as the just compensation to be paid for the taking of said parcels, all in accordance with the provisions of Section 258a, Title 40, U. S. Code;

(b) That the said Declaration of Taking was duly recorded in the office of the recorder of deeds for the County of San Diego on June 20, 1955, and appears in the official records of said County [130] in Book 5686, page 463;

(c) That on June 16, 1955, there were in full force and effect in the State of California, Sections

1 and 8 of Article XIII of the constitution of the State of California,¹ and Sections 2192,² and 4986 and 4986.2,³ of the Revenue and Taxation Code of the State of California. [131]

(d) That the State of California was admitted

¹ Article XIII, §1. Taxable Property: Exemptions: Public Property.

Section 1. All property in the state except as otherwise in this constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to value. The word "property" * * * is hereby declared to include * * * matters and things real, personal and mixed * * *.

§8. Annual Property Statement.

Section 8. The legislature shall by law require each taxpayer in this state to make and deliver to the county assessor annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at 12 o'clock meridian, on the first Monday of March.

² §2192. Time of Attachment of Liens.

All tax liens attach annually as of noon on the first Monday in March preceding the fiscal year for which the taxes are levied.

³ §4986. Cancellation of Taxes, Etc.: Authority to Cancel: Grounds: "Property Acquired" Defined: Consent of City Attorney: Cancellation Under Sub-paragraph (g).

All or any portion of any uncollected tax, penalty, or costs, heretofore or hereafter levied, may, on satisfactory proof, be cancelled by the auditor on order of the board of supervisors with the written consent of the district attorney if it was levied or charged:

* * * (f) On property acquired after the lien date by the United States of America if such property, upon such acquisition, becomes exempt from taxation under the laws of the United States.

to the Union of the United States of America as a state upon a compact with the United States enacted into Federal Law, which law is, in part, as follows:

“An Act for Admission of the State of California”, September 9, 1850—Section 3—that the said State of California is admitted into the union upon the express condition that the people of said state, through their legislatures or otherwise, shall [132] never * * * levy any tax or assessment of any description whatsoever upon the public domain of the United States.”

(e) That in reliance upon and in conformity with the provisions of Section 1, Article XIII of said constitution, and Section 4986, Revenue and Taxation Code aforesaid, plaintiff did, on or about November 4, 1955, file with the Board of Supervisors of the County of San Diego a petition for the cancellation of the taxes alleged by the defendant.

No cancellation under subparagraphs * * * (f) * * * of this section shall be made in respect of all or any portion of any taxes, penalties or costs attached thereto, collectible by county officers on behalf of a municipal corporation, without the written consent of the city attorney thereof.

§4986.2. Same: City Taxes: Procedure.

All or any portion of uncollected city taxes, penalties or costs may be cancelled on any of the grounds specified in Section 4986. If the city taxes are collected by the county, the procedure outlined in Section 4986 for the cancellation of taxes, penalties, or costs, shall be followed, except that the consent of the city attorney, in lieu of the consent of the district attorney, is necessary before cancellation * * *.

ant in its Answer and Supplemental Answer, to be due, which petition was duly received by said Board of Supervisors;

(f) That upon said application, action was taken on January 10, 1956, by the said Board of Supervisors, denying said petition of the plaintiff;

(g) That said adverse determination by the said Board of Supervisors was taken upon the refusal by the District Attorney for the County of San Diego of his consent to any cancellation of said taxes.

(h) Petitioner alleges upon information and belief, that the County of San Diego is collecting, by and through its collector of taxes, the general taxes for the purposes of the City of San Diego levied upon property within the said city; that all of the property described in the said Declaration of Taking lies wholly within the City of San Diego; that notwithstanding the provisions of Section 4986.2 of the Revenue and Taxation Code aforesaid, neither the District Attorney of the County of San Diego nor the Board of Supervisors of the County of San Diego asked for, nor received, the consent or refusal of the city attorney of the City of San Diego, to the cancellation of said taxes.

In support of this motion and petition the plaintiff-petitioner attaches hereto the affidavit of George F. Hurley, Assistant United States Attorney, together with Exhibits "A" and "B" therein referred to; [133]

Wherefore plaintiff-petitioner herein prays the

court that an order be issued to the defendant County of San Diego and its agents and officers, viz: the said District Attorney of the County of San Diego and the Board of Supervisors of the County of San Diego and to the City Attorney of the City of San Diego, and each of them severally, directing them, and each of them, to appear and show cause, if any they have, why the plaintiff should not obtain the relief hereinabove prayed for, and the plaintiff attaches hereto a draft of order to show cause to be directed to said defendant, which it requests the court to approve and execute and cause to be served in the manner provided by Rule 56 of the Federal Rules of Civil Procedure.

Dated: This— day of March, 1956.

UNITED STATES OF AMERICA,
LAUGHLIN E. WATERS,
United States Attorney,
JOSEPH F. McPHERSON,
GEORGE F. HURLEY,
Assistant United States Attorneys,
/s/ By GEORGE F. HURLEY. [134]

Verification of George F. Hurley

State of California
County of Los Angeles—ss.

George F. Hurley, being first duly sworn, deposes and says:

That he is an Assistant United States Attorney for the Southern District of California, and is in

charge of the records and files of plaintiff in the above entitled action;

That he has read the foregoing Motion for a Rule to Show Cause and knows the contents thereof;

That the facts therein alleged are true of his own knowledge, except as to matters that are therein stated on information or belief, and as to those matters, he believes them to be true.

/s/ GEORGE F. HURLEY

Subscribed and sworn to before me this 19th day of March, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk of the U. S. District Court of the Southern
District of California.

/s/ By WAYNE E. PAYNE,
Deputy. [135]

Affidavit of George F. Hurley in Support of Motion of Plaintiff for Rule to Show Cause Against County of San Diego

State of California
County of Los Angeles—ss.

George F. Hurley, being first duly sworn, deposes and says:

That on June 17, 1955, the undersigned caused to be transmitted to the recorder of deeds of the County of San Diego a certified copy of the Declaration of Taking filed in this action June 16, 1955;

That said Declaration of Taking was duly re-

corded in the office of the recorder of deeds on June 20, 1955, in Book 5686, page 463 of Official Records of said county;

That on November 4, 1955, he caused to be mailed to the Board of Supervisors of the County of San Diego, a petition for cancellation of the general taxes for the fiscal year 1955-1956, upon all of the real property and improvements there included and being condemned and taken by action 1506-SD of this Court, a copy of which petition is attached hereto, marked Exhibit "A", and by this reference made a part hereof;

That thereafter on January 18, 1956, there was delivered to the undersigned affiant a letter from the deputy clerk of the County of San Diego for the office of the Board of Supervisors of San Diego County, a photostatic copy of which is attached hereto and marked Exhibit "B", and by this reference made a part hereof, which said letter advised this affiant and the United States Attorney for the Southern District of California, that on January 10, 1956, said petition was denied;

That contained in the letter from the deputy clerk for the County of San Diego aforesaid, was an excerpt quoted from a letter from the District Attorney of the County of San Diego to the Board of Supervisors, which affiant, on information and belief, states was delivered to said Board of Supervisors prior to January 10, 1956. [136]

/s/ GEORGE F. HURLEY

Subscribed and sworn to before me this 19th day
of March, 1956.

[Seal] JOHN A. CHILDRESS,

Clerk of the U. S. District Court of the Southern
District of California.

/s/ By WAYNE E. PAYNE,
Deputy. [137]

EXHIBIT "A"

Petition for Cancellation of Assessment of Tax
Under Section 4986, Rev. & Tax. Code

To: The Honorable Board of Supervisors, County
of San Diego, State of California:

The United States of America hereby petitions
your Honorable Body to order the cancellation of
taxes and assessments on the following described
property:

See Exhibit "B" attached hereto and by this
reference incorporated into this Petition for Can-
cellation.

This petition is made in accordance with the pro-
visions of Section 4986 of the Revenue and Tax-
ation Code, the United States of America having
acquired title to the above described property by
virtue of Declaration of Taking, filed June 16,
1955 in the United States District Court for the
Southern District of California, Civil Action No.
1506-SD, having been recorded June 20, 1955 in
Book 5686, Page 463, Official Records of San Diego
County.

Dated: November 4, 1955.

United States of America,
Laughlin E. Waters,
United States Attorney,
/s/ By George F. Hurley,
Assistant U. S. Attorney

GFH:fbp

To: Laughlin E. Waters, United States Attorney
Lands Division, 821 Federal Building,
Los Angeles 12, California

Taxes cancelled this day of....., 19... (Cancellation No., dated

County Auditor
By
Deputy [138]

EXHIBIT "B"

[Letterhead of County of San Diego Board of Supervisors]

January 17, 1956

Laughlin E. Waters, United States Attorney
Lands Division, 821 Federal Building
Los Angeles 12, California

Dear Sir:

The Board of Supervisors has received your petition of November 4, 1955, for cancellation of taxes and assessments on certain property acquired by the United States by virtue of a declaration of taking filed June 16, 1955, in the United States

District Court for the Southern District of California, Civil Action No. 1506-SD.

The District Attorney for the County of San Diego advises as follows:

"This petition seeks the cancellation of 1955-56 taxes in the amount of \$334,912.62 and delinquent taxes in the amount of \$54.23 or a total of \$334,966.85 in County taxes on properties taken in eminent domain proceedings by the United States. This office has duly filed the answer of the County, setting up its right to be paid these taxes out of the condemnation awards to be posted in the action. Consent of this office to any cancellation of these taxes is accordingly denied."

On January 10, 1956, the Board of Supervisors of San Diego County denied your petition for cancellation of said taxes.

Yours very truly,

R. B. James,
County Clerk and ex officio Clerk of the Board of
Supervisors,

/s/ By J. Miller,

Deputy

JM:pm cc: Assessor [139]

[Title of District Court and Cause.]

**ORDER TO SHOW CAUSE PURSUANT TO
MOTION OF PLAINTIFF-PETITIONER**

To: President of the Board of Supervisors of the
County of San Diego and to the Said Board;

and to James Don Keller, District Attorney for the County of San Diego; and to Jean F. DuPaul, City Attorney for the City of San Diego, California:

Upon reading the motion and petition of plaintiff United States of America, and the affidavits, exhibits and memoranda in support thereof, and good cause appearing therefrom:

You and each of you are directed to appear in the United States District Court for the Southern District of California, Southern Division, on Tuesday, the 10th day of April, 1956, to show cause, if any you have,

(1) Why the court should not enter an order directing the District Attorney of San Diego County (i) to lodge with the Board of Supervisors of said county, his consent to the adoption, by said [140] board, of a resolution directing the county auditor to cancel the 1955-1956 general taxes upon all of the property acquired in fee title by the United States by its declaration of taking filed herein June 16, 1955, and the delinquent taxes due on certain portions of said property condemned, for the fiscal year 1955-1956 as to the current taxes, and for the fiscal years 1950-1954 as to the delinquent taxes and, (ii) to request and procure, or cause to be transmitted to the said Board of Supervisors, the consent of the City Attorney of the City of San Diego to the adoption of a resolution by the said Board of Supervisors directing the auditor of the County of San Diego to cancel said taxes insofar as the City of San Diego is concerned, and

(iii) a like order directed to the said Board of Supervisors to vacate and set aside its order denying the petition of the United States for the cancellation of said 1955-1956 general taxes and the delinquent taxes aforesaid, and to consider and adopt a resolution directing said auditor to cancel said taxes, and (iv) directing said District Attorney, City Attorney and Board of Supervisors to report to this Court on a day certain of their action with respect thereto or, in the alternative,

(2) Why a summary judgment should not be entered against the said County of San Diego that upon its said Answer and Supplemental Answer it take nothing by this action.

It is further Ordered that a copy of this order and of the petition of said plaintiff, together with supporting affidavits, exhibits and memoranda, be served upon the said Chairman of the Board of Supervisors of the County of San Diego and upon James Don Keller, its District Attorney, and Jean F. DuPaul, City Attorney, City of San Diego, and return thereon be made showing service hereof, and

You are further directed to file in this action any counter-petitions, motions, affidavits, or pleadings in response to this [141] Order and in opposition to the motion of plaintiff-petitioner, if any you desire to file, not later than March 30, 1956.

Dated: This day of March, 1956.

.....
United States District Judge. [142]

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES

I.

This court has jurisdiction to compel the officers of the County of San Diego named in plaintiff's Motion and Petition, to comply with California laws regarding cancellation of taxes.

(a) Article III, Section 2, United States Constitution. This is a controversy in which the United States is a party.

(b) Title 40, U.S.C., Section 258a. The court shall have power to make such orders in respect of * * * liens * * * taxes * * * and other charges * * * as shall be just and equitable.

(c) This is a federal question. The property of the United States is not subject to any form of state taxation unless Congress expressly consents.

U. S. v. County of Allegheny, 322 U. S. 174, 64 S. Ct. 908, 88 L. Ed. 1209;

Van Brocklin v. State of Tennessee, 117 U. S. 151, 29 L. Ed. 845.

(d) The Board of Supervisors and its officers are here bound by both State and Federal Law.

Since the text of paragraph (f) of Section 4984, Revenue and Taxation Code, gives the right to cancellation "if such property upon such acquisition becomes exempt from taxation under the laws of the United States", the Board of Supervisors of San Diego County and its officers were bound by the decisions of the Supreme Court of the United

States that, as a proposition of law, such property is exempt. In the face of those precedents the County cannot compel collection of this tax or enforce it by sale. Thus this court has jurisdiction of the defendants.

McCullouch v. Maryland, 4 Wheat 316, 4 L. Ed. 579;

Van Brocklin v. Tennessee, *supra*;
U. S. v. Allegheny County, *supra*.

II.

Under California and Federal laws, it is the duty of the officers of the County of San Diego to cancel, at petition by plaintiff, the taxes upon the lands acquired by it with the filing of its Declaration of Taking and deposit of the estimated compensation into the court registry.

(a) Article XIII, Sections 1 and 8, Constitution of the State of California. West's Annotated California Codes, Constitution, Vol. 3, P. 97 and P. 158;

(b) Revenue and Taxation Code of California, Sections 4986 and 4986.2, and Section 2192 (fixing lien date). Deerings California Codes, Revenue and Taxation, C. A., Vol. 1. [144]

(c) Title 40, U.S.C., Section 258a.

(d) The County may make no presumption about the matter other than that the properties are exempt.

Los Angeles v. Board of Supervisors of Mono County, 108 Cal. App. 655 (1930).

III.

Under California laws the obligation to cancel the taxes is not subject to exercise of discretion on the part of the officers of the County if the application of the United States is in due form of law and fair on its face. The word "may" appearing therein is to be construed as "must" when the applicant is a public body.

City of Los Angeles v. Board of Supervisors of County of Mono, 108 Cal. App. 655 (1930);

City of Los Angeles v. Ford, 12 Cal. App. (2d) 407 (1938);

County of Los Angeles v. State, 64 Cal. App. 290, 222 Pac. 153;

Ops. of Attorney General of California, Vol 2, p. 526; Vol. 4, p. 308; Vol. 6, p. 72.

IV.

(Note: As we read the statutes of the State of California which entitle the United States to cancellation of the taxes, the following elements and steps must appear to exist and have been taken:

1. The taxes must be uncollected;
2. The property, when acquired, must be exempt under the laws of the United States;
3. The property must have been acquired by the United States after the lien date;
4. The petitioner must make satisfactory proof of the facts which, under the laws, entitle it to cancellation). [145]

The application of the United States for can-

cellation of the taxes was in due form of law and fair on its face.

1. The taxes were uncollected. (This is conceded by the County by its Answer);

2. Because the property was owned by the United States, it must be presumed that it was exempt from taxation under the laws of the United States, and the County could, at the most, only suspend cancellation until inquiry was made on that point. Exhibit "B" to Hurley affidavit shows that this was not done;

3. The property was acquired by the United States after the lien date fixed by law.

The tax lien date for the 1955-1956 taxes was 12 Meridian, the first Monday in March of 1955,—that was March 7, 1955. The property was acquired by Declaration of Taking filed, and deposit made, June 16, 1955.

Article XIII, Section 8, and Revenue and Taxation Code of California, Section 2192.

4. Petitioner made satisfactory proof of the facts entitling it to cancellation.

Exhibit "A" to Hurley affidavit establishes:

(a) The United States owned the property. (Reference was made therein to copy of Declaration of Taking filed and recorded);

(b) The property was in sovereign public use and exempt by United States law. The recorded document showed the acquisition to be in fee for military purposes;

(c) Application to the County for cancellation

was made after lien date, as is shown by the date on the exhibit; [146]

(d) Defendant's Answer, filed August 9, 1955, admitted that the taxes were due even though not then ascertained as to amounts and, therefore, uncollectible.

5. The District Attorney could refuse consent only if applicant had not made out a case, as above demonstrated. His denial did not recite that applicant had failed in any of these elements or steps.

Discussion

The California Revenue and Taxation Code, Section 4986 (enacted in 1939) provides in part:

"All or any portion of any uncollected tax, penalty, or costs heretofore or hereafter levied, may, on satisfactory proof, be cancelled by the auditors on order of the board of supervisors, with the written consent of the district attorney, if it was levied or charged: * * * (f) on property acquired after the lien date by the United States of America, if such property upon such acquisition becomes exempt from taxation under the laws of the United States."

Since 1819, when *McCullouch v. Maryland*, 4 Wheat (U. S. 1) 316, 4 L. Ed. 579, was decided, it has been established that the property of the United States is immune from any form of state taxation, even when it is in the hands of corporate agencies of the United States, unless Congress expressly consents to the imposition of such liability.

Van Brocklin v. Tennessee, 117 U. S. 151, 29 L. Ed. 845, 6 S. Ct. 670;

United States vs. Allegheny County, 322 U. S. 174, 88 L. Ed. 1209, 64 S. Ct. 908.

There is no federal statute, applicable to the case at bar, in which Congress has waived the exemption of the property taken from state taxation, and the burden of proving that there is, is in [147] the County.

Los Angeles v. Board of Supervisors of Mono County, 108 Cal. App. 655 (1930).

Public lands are not taxable and there is no presumption that they are taxable, the presumption being to the contrary.

Los Angeles v. Board of Supervisors of Mono County, 108 Cal. App. 655 (1930).

In the case last above cited, a writ of mandate was brought to compel cancellation of certain tax assessments and tax deeds under provisions of Section 3804a of California Political Code (predecessor statute to Section 4986 cited supra). The tax was imposed by the Board of Supervisors of Mono County. Los Angeles City had acquired the land in question from the United States. The "patent right" to the land was assessed by Mono County, and the City requested cancellation of the assessments. It was argued that the Board of Supervisors had a discretion to deny the city's petition to cancel taxes. The court held that the Board must cancel the taxes. These were public lands and not taxable.

The duty placed upon the Board of Supervisors

to cancel taxes upon petition of the United States is mandatory.

In *City of Los Angeles v. Ford*, 12 Cal. (2d) 407 (1938) the court considered Section 3804a of the Political Code, *supra*, and held the duty to be mandatory. Incidentally, the court even held that the fact the property might revert to private ownership is of no consequence.

The court, in *Los Angeles v. Board of Supervisors of Mono County*, 108 Cal. App. 655, *supra*, on this point said, at page 666:

"It is further argued that the Board of Supervisors of Mono County, nevertheless, had a discretion to deny the appellant's petition by reason of the use of the word "may" in Section 3804a of the Political Code. This contention, however, is untenable." [148]

In the case of *County of Los Angeles v. State*, 64 Cal. App. 290 (222 Pac. 153), the same court considered somewhat at length the use of the word "may", and under what circumstances it would be held mandatory and not merely permissive, and it was there held, (quoting from the syllabus):

"While the word "may" is primarily and ordinarily a permissive term and not peremptory, nevertheless, when the rights of the public or of other persons, in this case, the State of California, are dependent upon the exercise of the power conferred, the word "may" takes on a mandatory form and the performance of the act provided for it is neither optional nor

discretionary upon the person or officer designated and authorized to perform the act."

(Pet. for hearing by Cal. Sup. Ct. denied.)

The following opinions of the Attorney General of California, in interpreting and advising upon Political Code, Section 3804a, and the successor statute, Revenue and Taxation Code, Section 4986, are persuasive on the subject. The opinions should be given special weight in this field since it is one in which the Attorney General of California, the constitutional officer charged with this duty, is advising the district attorneys and governmental agencies concerning their rights to cancel taxes.

1. 2 Op. Atty. Gen. 526 (Op. NS-5265—Dec. 28, 1943), involved a petition for cancellation of taxes requested by the Veterans Welfare Board. The opinion considered that former Section 3804a of the Political Code was held by the courts to give a mandatory meaning to "may", and that the present statute gives a mandatory meaning to "may." It is the duty of the board of supervisors to cancel such taxes, and this duty may be enforced by writ of mandamus.

2. 4 Atty. Gen. Op. 308 (Op. NS-5501—Sept. 12, 1944). An opinion was requested on the right of a public utility district [149] to obtain cancellation of assessments levied by a sanitary district. The opinion stated that it is now settled that cancellation of taxes may be compelled where property is acquired by public authority after the lien date. Hence the board of supervisors may properly can-

cel taxes levied, which became a lien on property acquired by the public utility, prior to the date of acquisition.

3. 6 Atty. Gen. Op. 72 (Op. 45-144—Aug. 20, 1945) stated that a municipal ordinance in conflict with Revenue and Taxation Code Section 4986, must yield. Hence cancellation of tax liens of City of Bakersfield on property acquired by a school district must be done.

Article V, Section 21, of the California Constitution, provides in part as follows:

“* * * the Attorney General shall be the chief law officer of the state and it shall be his duty to see that the laws of the State of California are uniformly and adequately enforced in every county of the State. He shall have direct supervision over every district attorney * * * in all matters pertaining to the duties of their respective offices. * * *”

The courts have said the following concerning the opinions of the Attorney General of California:

In People v. Shearer, 30 Cal. 645 (1866), *supra*, it was said that the opinions of the Attorney General are considered quasi judicial in character and entitled to great respect by reason of his duties and relation to the government, notwithstanding the fact that his opinions are not of controlling authority.

In Hutchins v. County Clerk of Merced County, 140 Cal. App. 348, 35 P. (2d) 563, the court said

that although the opinions of the Attorney General are not of the same weight or authority as those of the court, yet if the former's opinion coincides with the opinion of the court, the latter can properly adopt it. [150]

In summary, upon acquisition of property by the United States in fee, there is a mandatory duty imposed upon the Board of Supervisors to cancel all taxes and penalties then due, whether delinquent or current taxes, upon petition of the United States for such cancellation. The fact that a lien may have been imposed upon the property prior to the date of acquisition does not change the rule. The duty of the District Attorney is to advise upon the legality of the request for cancellation, and not pass upon matters of policy, which is a legislative function. There is no discretion placed in the District Attorney to deny the request, provided the request for cancellation meets the statutory requirements.

In a proper case the obligation of the board of supervisors to cancel could be enforced by suit for mandamus. It is not necessary to take this step in the case at bar as there is a complete remedy here available to the plaintiff United States. This being a federal question, the jurisdiction and powers of the court are plenary to enforce both the California law and the Federal law, and under Section 258a of Title 40, U.S.C., the court has the right to act as if this were an action in mandamus to see that justice and equity are attained.

Since the statutory duty is placed upon the Board of Supervisors of San Diego County to cancel the

taxes upon petition being made by the United States, under the facts before the court, the County of San Diego has had nothing taken from it requiring assessment of compensation to it, as it has no right to recover taxes, whether current or delinquent, from the funds in the registry of the court. Likewise, the County of San Diego has no right to recover in this action upon any previous interest it may have had in real property taxes.

Finally, it would hardly be just or equitable for the County to prevail. If it did, then the tax would have to be paid in full out of the registry deposit, for the tax year 1955-1956, by owners [151] who had no title to, and no benefit from, the use of the property from June 16, 1955 to June 30, 1956 when the tax year ends. Also, they had already paid in full, in 1954, the taxes on said property up to June 30, 1955. Hence the County lost nothing because the United States took title fourteen days before the year ended for which the taxes were paid.

Furthermore, if the County was allowed to recover, it would defeat by a technicality, at the expense of the former owners, the clear mandate that real property and improvements thereon devoted to a public use are immune from taxation.

The United States here is proceeding as *parens patriae* to protect its citizens from an overreaching.

As we view it, Congress could have had such events in mind when it wrote Section 258a of Title 40, U.S.C. into law.

Respectfully submitted,

LAUGHLIN E. WATERS,

United States Attorney,

JOSEPH F. McPHERSON,

GEORGE F. HURLEY,

Assistant United States Attorneys,

/s/ By GEORGE F. HURLEY,

Attorneys for United States
of America. [152]

Acknowledgment of Service by Mail attached. [153]

[Endorsed] : Filed March 19, 1956.

[Title of District Court and Cause.]

MOTION TO STRIKE

To Defendant the County of San Diego, a Political Subdivision of the State of California, and to James Don Keller, District Attorney and County Counsel, and to Robert G. Berrey, Deputy, Its Attorneys:

You, and Each of You, Will Please Take Notice that defendants Charles W. Carlstrom, also known as C. W. Carlstrom, The Salvation Army, a California corporation, The Salvation Army, a New York corporation, the Southern California District Council of the Assemblies of God, Inc., a non-profit corporation, and the [154] Southern California Children's Aid Foundation, Inc., a non-profit corporation, will move the above entitled Court on the 12th day of April, 1956, at the hour of 10:00 a.m.

on said day, or as soon thereafter as counsel may be heard, for an order striking paragraph 3 of the Answer of said defendant County of San Diego, filed on or about August 10, 1955, and paragraph 1 of the Supplemental Answer of said defendant, filed on or about January 3, 1956.

Said motion will be based upon the grounds that:

1. The alleged lien for city, county and school district taxes, referred to in said paragraphs of said Answer and Supplemental Answer is not a valid lien under the laws of the State of California against the property described in plaintiff's First Amended Complaint in Condemnation, as amended, and,
2. The alleged lien for city, county and school district taxes is not a valid lien under the laws of the State of California against any funds herein-before or hereinafter deposited in Court pursuant to the Declaration of Taking filed herein by plaintiff on or about June 16, 1955, and,
3. The alleged lien for said city, county and school district taxes is not a valid lien under the laws of the State of California against any funds hereinafter deposited into Court or paid to these moving defendants pursuant to any judgment in condemnation or settlement of the above entitled action.

Said motion will be further based upon all of the pleadings, documents and records on file herein and upon the points and authorities attached hereto and filed concurrently herewith.

Dated: April 12, 1956.

PROCOPIO, PRICE, CORY and
SCHWARTZ and PAUL, HAST-
INGS and JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for defendant Southern California Children's Aid Foundation, Inc., a non-profit corporation. [155]

PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for defendant Southern California District Council of the Assemblies of God, Inc., a non-profit corporation.

RUBIN & SELTZER,

/s/ By NORMAN T. SELTZER,

Attorneys for The Salvation Army, a California corporation, and The Salvation Army, a New York corporation.

HILL, FARRER & BURRILL,

/s/ By ALBERT J. DAY,

Attorneys for defendant Charles W. Carlstrom, also known as C. W. Carlstrom. [156]

POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE

The County of San Diego by its Answer filed on or about August 10, 1955 and its Supplemental Answer filed on or about January 3, 1956 is asserting an alleged lien against the various tracts of proper-

ties owned by these moving defendants on behalf of itself, the City of San Diego and certain unspecified School Districts. All of these taxes are allegedly due for the fiscal year 1955 to 1956 with the exception of Tract A-100 which is owned by a separate party.

The validity, effect and application of a tax lien upon the deposit and award in a condemnation action brought by the United States is determined by the local law of the state in which the property is situated.

People of Puerto Rico vs. United States, 131 F. 2d 151

United States vs. 25.936 Acres of Land in the Borough of Edgewater, 153 F.2d 277, 279

United States vs. Certain Parcels of Land in the City of San Diego, 44 Fed. Supp. 936

The California Revenue and Taxation Code, Sec. 2192, provides:

"All tax liens attach annually as of noon on the first Monday in March preceding the fiscal year for which the taxes are levied."

Article XX, Sec. 5, of the Constitution of California, provides:

"The fiscal year shall commence on the first day of July."

On June 16, 1955, the date upon which plaintiff filed its Fee Declaration of Taking, the California Code of Civil [157] Procedure, Sec. 1252.1, provided:

"1252.1. [Taxes, penalties, costs: Computation: Payment from award.] At the time of commencement of the trial of any condemnation action in which a public agency exempt from taxes is the plaintiff, the clerk of the court shall serve upon the officer or officers responsible for the computation of all ad valorem taxes on the property being condemned, written notice to prepare and file with the clerk of the court a certificate of all delinquent taxes, penalties and costs, and of all current taxes, due and payable on said property as of the date said notice was served. There shall be filed by the clerk with the court, as part of the records in said action, a copy of said written notice with the acknowledgment of service and the date thereof endorsed thereon by the officer so served. For the purposes of this section, the term taxes shall include ad valorem special assessments levied and collected in the same manner as other taxes. In the event said notices are served at a time when the amount of the current taxes, which are a lien on the property but not yet payable, are not known to the certificating officers, said certificates shall contain, in lieu of a statement of the current taxes, a statement based on (1) the assessed value for the current year of the property being condemned, and (2) the tax rate for the previous fiscal year. Said certificates shall be filed with the clerk of the court, as a part of the records and files of said condemnation action, within 10 days after the [158] service of said notices, and in the event of failure on the part of any officer upon whom such notice is served to file said certifi-

cates within said time, it shall be conclusively presumed that as to the taxes for the collection of which such officer is responsible, no taxes are due and payable on said property, or in any manner constitute a lien thereon.

Before making any final order of condemnation in such action, the court shall determine whether said certificates have been filed by all officers upon whom the notices have been served. If said certificates have been filed, the court shall as a part of the judgment direct the payment to the tax collecting agencies, out of the award, the amounts of the delinquent taxes, penalties and costs, and the amounts of the current taxes, shown by said certificates to be due and payable. In the event said certificates show that the amounts of the current taxes which are a lien are not known, and in lieu of the statement of current taxes contain a statement based on the assessed value for the current year and the tax rate for the previous year, the court shall in lieu of directing the payment of current taxes order the payment of sums bearing the same relation to the amounts shown in said statements as the portion of the current fiscal year from the commencement thereof to the date of the final order of condemnation bears towards an entire fiscal year; provided, that in the event an order permitting the plaintiff to take immediate [159] possession was entered in such action, prior to the payment of any taxes for the fiscal year during which said order was entered, the court shall, for such fiscal year, order the payment of a sum bearing the same relation to the

amount of the taxes for such fiscal year, or in the event said amount is not known, to the amount shown in said statement based on the assessed value for the current year and the tax rate for the previous year, as the portion of such fiscal year from the commencement thereof to the date of entry of such order of immediate possession bears towards an entire fiscal year.

In any such action, the payment of the sums ordered by the court to be paid shall be considered to be in lieu of all taxes, current and delinquent, and all penalties and costs, due and payable with respect to the property being condemned, and said judgment shall, in addition to ordering said payments, order the cancellation, as of the date of the judgment, of all taxes, current and delinquent, and all penalties and costs, on said property. Said judgment shall be conclusively binding on all tax collecting agencies upon which the notices were duly served by the clerk of the court.

The subject of the amount of the taxes which may be due on any property shall not be considered relevant on any issue in any such condemnation action, and the mention of said subject, either in the voir dire examination of jurors, or during the examination of witnesses, or as a part of the court's instructions to the jury, or in argument [160] of counsel, or otherwise, shall constitute grounds for a mistrial in any such action. [Added by Stats. 1953, ch. 1792, § 1.]” [Emphasis added] [Repealed by Stats. 1955, ch. 1229, § 1, effective September 1, 1955.]

This statutory provision relates to all condemna-

tion actions in which "a public agency exempt from taxes is the plaintiff * * *" The plaintiff herein, the United States Government, is such an agency.

In essence, this section of the Code of Civil Procedure provides that all unpaid ad valorem taxes, even though a lien on the property, are to be pro-rated from the commencement of the fiscal year to the date upon which title passes to the tax exempt condemnor or it is given immediate possession of the property. As a result thereof, the filing of the government's Declaration of Taking on June 16, 1955, which is prior to the commencement of the fiscal year 1955 to 1956, would prevent the payment of any taxes from the award in condemnation herein since title passed to the government on said date and it was given immediate possession of the property.

In Collector of Revenue vs. Ford Motor Company, 158 F.2d 354, the court, in discussing the effect of a lien for local taxes, held, at page 356:

"We think the court erred in holding that in the absence of some state law to the contrary, the lien for taxes might be split or apportioned. The rule is that absent some state law to the contrary, such lien must be paid in its entirety * * *

The local law must, of course, be consulted to determine when the lien attached, and if the lien has attached, as in the instant [161] case, before the United States acquired title, whether the local law permits apportionment of the taxes assessed. [Emphasis added]

The question of the applicability of a state apportionment statute was also considered in a series of cases involving 25.936 Acres of Land in Edgewater, New Jersey. In the District Court case, U. S. vs. 25.936 Acres of Land, etc., 57 Fed. Supp. 383, a New Jersey statute provided that upon acquisition through eminent domain, the owner of the property to be acquired should be liable for the payment of such proportion of the taxes for the current year as the time between the previous January 1 and the date the condemning body acquired its title bears to the full calendar year. The District Court held that the owner was entitled to the full award. On appeal, the Circuit Court, in 153 F.2d 277, reversed the lower Court and directed the owner to obtain a decision of the New Jersey Courts as to when the tax lien attached. In the subsequent New Jersey case of Borough of Edgewater vs. Corn Products Refining Co., 136 N.J. Law 220, 53 Atl. 2d 212, the Court actually apportioned the taxes in accordance with a statutory mandate similar to that in California.

Title passes to and vests in the United States upon the filing of a declaration of taking and the deposit of the estimated just compensation into court. (40 U.S.C.A., Sec. 258a) Thus, at the time of the filing of the plaintiff's Declaration of Taking, June 16, 1955, the United States, a tax exempt public agency, not only became the fee owner of the property but became entitled to and actually went into possession of the fee interests in the property. This was done approximately one-half of a month

before the commencement of the current 1955 to 1956 fiscal year.

The rights of the parties are fixed and determined as of the date when the declaration of taking is filed. [162]

Danforth vs. U. S., 308 U.S. 271, 284, 84 L.Ed. 240, 246

Weber vs. Wills, 154 F.2d 1004

The effect of the filing of the declaration of taking on the rights of the parties was succinctly stated in United States vs. Bennett, 57 Fed. Supp. 670, at pages 673 to 674, where the court held:

"The determination of the persons entitled to compensation out of the award must be made as of November 16, 1942, the date of the filing of the declaration of taking. 'For the reason that compensation is due at the time of taking, the owner at that time, not the owner at an earlier or a later date, receives the payment.' Danforth v. United States, 308 U.S. 271, 284, 60 S.Ct. 231, 236, 84 L.Ed. 240. The award stands in the place of the property. Washington Water Power Co. v. United States, 9 Cir., 135 F.2d 541. Since, as of the date of taking the property had been foreclosed and a certificate of sale issued and assigned to the Cement Company, the question for determination is what was the legal position of the holder of the certificate of sale as of that date? Since the sale was conducted by authority of the state statute, Rem.RevStats. of Wash. §§ 578 to 603 inc., the status of the party claiming under it must be determined on the basis of local law." (Page 673-674)

The validity of the tax liens of the County of San Diego, City of San Diego and the School District depends upon [163] the entire law of the State of California. In *United States vs. Certain Parcels of Land in the City of San Diego*, 44 Fed. Supp. 936, the Court in holding, prior to the enactment of Code of Civil Procedure, Sec. 1252.1, that the tax lien attached for the entire fiscal year, considered not only the applicable Revenue and Taxation Code sections but also the pertinent provisions of Code of Civil Procedure, Sec. 1248, which applies to actions in eminent domain (see pages 937 to 939). Although the result in that case was to enforce the tax lien, we respectfully submit that this Court must also consider the effect of the relevant provisions of Code of Civil Procedure, Sec. 1252.1.

Code of Civil Procedure, Sec. 1252.1, is a specific apportionment statute dealing with and controlling the extent of the taxing authority's lien upon the award in condemnation. Its clear mandate is that a property owner, who has been deprived of title or possession of his property, should not be required to pay taxes for any portion of the fiscal year subsequent to such event. The equity of such a statute is particularly applicable to the case at bar where the actual title to the property passed to the United States prior to the commencement of the current fiscal year. To permit a tax lien for the entire fiscal year to be deducted from the award in condemnation would be unjust and inequitable to these moving defendants, and, we respectfully submit, would violate the clear mandate of Code of Civil Proce-

dure, Sec. 1252.1. Therefore, we respectfully submit that the motion of these defendants be granted.

Dated: April 12, 1956.

Respectfully submitted,

HILL, FARRER & BURRILL,

/s/ By ALBERT J. DAY [164]

PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY

RUBIN & SELTZER,

/s/ By NORMAN T. SELTZER [165]

[Endorsed]: Filed April 12, 1956.

[Title of District Court and Cause.]

MEMORANDUM

This matter comes before the court on an order to show cause, issued on the motion of the plaintiff, United States of America, directed to the Board of Supervisors of San Diego County, the District Attorney of that County and the City Attorney of San Diego. It required them to show cause why the plaintiff should not have certain relief by way of mandamus looking towards the cancellation of taxes pursuant to Sections 4986 and 4986.2 of the Revenue and Taxation Code, or in the alternative for a summary judgment against the County of San Diego on its answer and supplemental answer heretofore filed. These answers set forth the claim of the County of San Diego to taxes on the real property involved in this condemnation action collectible by the County of San Diego, for the City of San Diego, pursuant to State statutes.

The motion and the order to show cause were originally directed to the sum of \$54.23 delinquent taxes on certain of the property, and to taxes in excess of \$300,000 for the fiscal [166] year 1955-56, that is the year beginning July 1, 1955 and ending June 30, 1956, which taxes became a lien against the real property on the first Monday of March, 1955.

After the filing of the motion and the order to show cause the government amended its showing by eliminating the reference to the delinquent taxes in the sum of \$54.23 for the fiscal years prior to 1955-56. This matter is thus presently not before us.

The United States acquired the real property and the fee simple thereof by a declaration of taking filed on June 16, 1955, and recorded with the County Recorder on June 20, 1955. Thus, the government took the property before the beginning of the fiscal year to which the \$300,000 in taxes pertained. However, these taxes became a lien on the property on the first Monday in March, 1955, Sec. 2192 Revenue and Taxation Code. The government's argument on the equities of the matter, namely that the taxes for the '55-'56 fiscal year pertained to a fiscal year after the date of taking is no more pertinent to the legal issues than is defendant's argument as to how it is hurt by the removal of property from its tax rolls by government taking.

If the statutes of the State of California, particularly § 4986 and § 4986.2 of the Revenue and Taxation Code permit the cancellation of taxes, then we

are not concerned with these equitable matters urged by the parties.

City of Los Angeles v. Ford [1938] 12 Cal. 2d 407, was decided under the predecessor statute, § 3804(a) Political Code. It reversed a judgment in a mandamus proceeding where the trial court refused to cancel taxes. It relied on People v. Board of Supervisors [1932] 126 Cal. App. 670. See also, City of Los Angeles v. Board of Supervisors of Mono County [1930] 108 Cal. App. 655, which held that the word "may" means "must" and there was no discretionary action involved where a public body [167] sought cancellation of unpaid taxes under the statute, and relied on County of Los Angeles v. State [1923] 64 Cal. App. 290.

§4986, Revenue and Taxation Code as it now reads, is somewhat different from the wording of § 3804(a) of the Political Code as it read in 1938, when City of Los Angeles v. Ford, *supra*, was decided by the Supreme Court. The differences we believe, are immaterial.

§ 4986 provides that taxes "may, on satisfactory proof, be cancelled by the auditor on order of the board of supervisors with the written consent of the district attorney if * * *", and further provides that no cancellation under subparagraph (f) relating to lands acquired by the United States, shall be made of any taxes "collectible by county officers on behalf of a municipal corporation without the written consent of the City Attorney thereof."

§ 3804(a) of the Political Code, predecessor of § 4986 Revenue and Taxation Code, provided that

uncollected taxes "may, upon satisfactory proof thereof, be cancelled by the officer having custody of the record thereof upon the order of the board of supervisors * * * with the written consent of the district attorney, city attorney or legal advisor of said board * * *". And further provided that "in the city and county of San Francisco the written consent of the city attorney shall have the same effect as the written consent of the district attorney."

Insofar as § 4986 Revenue and Taxation Code requires "written consent of the district attorney" or the "written consent of the city attorney" we do not believe that there have been any substantial changes made from the section as it read when it appeared in the Political Code. Furthermore, if the word "may" is to be read as "must" where a public body is concerned, and which has been so held by the California cases, [168] it would be inconsistent to provide that the district attorney or the city attorney had some veto power on the mandatory duty of the public body, which they might exercise by withholding their consent.

The above cited cases have not been overruled. As late as 1952 in *Southwestern Inv. Co., a corp. v. City of Los Angeles* 38 Cal. 2d 623, at 627, the court cited *City of Los Angeles v. Ford*, supra, as part of the recitation of facts, stating "At some time during the transactions delinquent taxes and penalties to the extent of about Thirty-two thousand were cancelled (see *City of Los Angeles v. Ford*, 12 Cal. 2d 407, 84 Pac. 2d 1042)."

As noted, *City of Los Angeles v. Board of Supervisors*, *supra*, construed the word "may" to mean "must," and in doing so it relied on the *County of Los Angeles v. State*, *supra*. In 1954 in *Harless v. Carter*, 42 Cal. 2d 352, the Supreme Court reached a like interpretation as to the word "may" in another statute and quoted with approval at 357, from the *County of Los Angeles v. State*, *supra*.

If the effect of *Vista Irrigation District v. Board of Supervisors* [1948] 32 Cal. 2d 477 is to change the established rule, we think it is unfortunate and poorly considered. It is a one page decision. The case cited to the effect that the remedy of mandamus is unavailable is *Sherman v. Quinn*, 31 Cal. 2661, which was an action by a private party and not by a government agency.

Likewise *Security-First National Bank v. Board of Supervisors* [1950] 35 Cal. 2d 323, at 327, which cites *Vista*, also involved a bank, a private party.

The *Vista* case has caused confusion. 25 So. Cal. Law Review 395 at 403, "California Property Tax Trends," stated that a writ of mandamus would issue at the request of either a private or a governmental tax payer to enforce action by [169] the Board but after the *Vista* case, 27 So. Calif. Law Review page 415 at 436, "California Property Tax" states, "By recent decision however, this right no longer exists" citing *Sherman v. Quinn* and the *Vista* case. If the Supreme Court of California desired to turn its back on *City of Los Angeles v. Ford*, *supra*, and the other cases above cited they could have done it with more finesse than was done

in the Vista case. We are inclined to think that although a private party may no longer bring a writ of mandate, a public body may still proceed under the Ford case.

However, the authorities relied upon by the County of San Diego only go to the matter of remedy in the state courts and not to the matter of the right to the relief sought. They do not attack the proposition that there is a duty on the part of the Board of Supervisors to comply with § 4986 of the Revenue and Taxation Code, nor do the authorities relied upon by the defendant in any way detract from the holdings of the California courts that the word "may" in this section means "must" and that there is no discretion involved in the requested action of the Board of Supervisors.

We are not here concerned with a state remedy, we are concerned with a Federal remedy. Three alternatives suggest themselves as to a federal remedy, mandamus, injunction and summary judgment.

(1) Mandamus

The question before us is presently presented by the request for a mandatory order of this court requiring certain acts on the part of the Board of Supervisors, the District Attorney and the City Attorney, or in the alternative for a summary judgment against the County of San Diego upon its answer and supplemental answer, that it take nothing in this action. [170]

This district court has no primary jurisdiction in mandamus, Petrowski v. Nutt [9 Cir. 1947] 161

F. 2d 938. There are numerous Federal cases which hold that the district court may grant mandatory relief in the nature of mandamus "ancillary to jurisdiction independently conferred" or "in aid of its jurisdiction," or "necessary to the exercise of jurisdiction," Petrowski, (*supra*, page 939, and note 3). It could well be argued that this court has jurisdiction to grant mandatory relief requested on the following basis: This court has jurisdiction of this action in condemnation under 28 USCA § 1358, and that it has power under Title 40, USCA § 258(a) "to make such orders in respect of * * * liens * * * taxes * * * and other charges * * * as shall be just and equitable"; that a mandatory order in this proceeding would be ancillary to jurisdiction in the condemnation action, and in aid of its jurisdiction so acquired. Since we think relief may be otherwise granted, no useful purpose would be solved by pursuing this line of inquiry or analysing the case to determine the distinction, if any, between a right to exercise mandamus "ancillary to other jurisdiction" or "in aid of its jurisdiction," or "necessary to its jurisdiction."

Injunction

We think that this court has jurisdiction to grant an injunction restraining the County of San Diego, City of San Diego, Board of Supervisors, the District Attorney and the City Attorney from taking any steps to collect the taxes or assert any lien right in connection therewith.

We start with 28 USCA § 1341 [1948 Ed.] which

reads: "The district court shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." The cases have expressly held however, [171] that the section is not applicable to the United States as plaintiff.

United States v. City of New York [2 Cir. 1949] 175 F. 2d 75.

United States v. Woodworth [2 Cir. 1948] 170 F. 2d 1019.

City of Springfield v. United States [1 Cir. 1938] 99 F. 2d 860.

United States v. Oklaloosa County, Fla. [D.C. Fla. 1945] 59 Fed. Supp. 426.

Although in *United States v. City of New York*, *supra*, the decree for an injunction issued below was reversed, the court did so based on the uncertainty in State law and footnoted the holding with "The situation would be different if the state courts had previously answered the question unequivocally." (Note 2). These cases demonstrate the use of injunction by the Federal Government to restrain assessment, levy or collection of State taxes in condemnation actions. Certainly the fact that the plaintiff seeks relief on pleadings speaking of mandamus, would not in itself prevent injunctive relief being granted. But we do not choose to grant injunctive relief, since we are granting the motion for summary judgment.

Summary Judgment

There is no dispute as to the facts and Rule 56 F.R.C.P. is applicable. Other defendants have participated at the hearing and have sought alternative relief under another code section for the cancellation of the taxes in question.

The California cases demonstrate that when request is made of the county authorities for cancellation of taxes under § 4986 Revenue and Taxation Code, and the request is in proper form no discretionary function exists in the county authorities. There is no need that the question as to the right of cancellation be raised only by mandamus. Here it is raised by motion for summary judgment. The motion for summary judgment is granted. [172]

Entry of a Final Judgment

Upon granting the motion for summary judgment the court does expressly "direct the entry of a final judgment * * * upon an express determination that there is no just reason for delay and upon an express direction for entry of judgment" Rule 54(b) F.R.C.P.

To come within this section it must appear that there can be a final judgment upon one or more, but less than all the claims. We think the case of Burkhard v. United States [9 Cir.] 210 F. 2d 602 and Burkhard v. United States [9 Cir.] 1955, 227 F. 2d 659 involving condemnation, when read together, demonstrate that the claim for taxes is a claim suitable for a final judgment on compliance with Rule 54(b). It therefore would be appealable by the defendant, County of San Diego.

Motion by Other Defendants
Under § 1252.1 C.C.P.

§ 1252.1 C.C.P., relied upon by certain other defendants, seeking cancellation of taxes, was added by the statutes of 1953 ch. 1792, § 1. It was repealed by statutes of 1955, ch. 1229 § 1. The repeal was effective September 1, 1955. It was in effect on the date of taking viz, June 16, 1955.

We properly look to local law to determine "whether the local law permits apportionment of the taxes assessed," Collector of Revenue v. Ford Motor Company [8 Cir. 1946] 158 F. 2d 354, 356. See United States v. 25.936 Acres of Land [D.C. N.J. 1944] 57 Fed. Supp. 383, reversed under the same name [3 Cir. 1946] 153 F. 2d 277, and remanded with instructions to retain jurisdiction to permit the parties to litigate the issue in the New Jersey courts, since "no New Jersey case has passed upon the precise question of law presented by the circumstances at bar." (page 279). Thereafter in Borough of Edgewater v. Corn Products Refining Co. 136 N.J. Law 220, [173] 53 ATL 2d 212, the New Jersey court apportioned the taxes in accordance with a statute similar to § 1252.1 C.C.P.

The general intent of § 1252.1 C.C.P. is clear—to permit the apportionment of taxes for a fiscal year when a public agency takes property, said apportionment resulting in cancellation of taxes after the date of taking. It is a complicated statute and poorly drawn. It speaks of where a "public agency exempt from taxes is the plaintiff * * *". This would include the United States. It contemplates a

final judgment of condemnation after a trial (the ordinary California practice) but has a proviso "in the event that an order permitting the plaintiff to take immediate possession was entered in such action" (which are the facts of this case, "prior to the payment of any taxes for the fiscal year during which the order was entered, the court shall, for such fiscal year," prorate the taxes to the date of such order for immediate possession.

The taxes for the year '55-'56 have not been paid, but the section speaks of the apportionment of taxes for the fiscal year "during which the order was entered." In our case this was the fiscal year 1954-55, since the taking was on June 16, 1955.

True, the amount ordered paid under such apportionment shall be in "lieu of all taxes current and delinquent, * * * and said judgment shall in addition to ordering said payment, order the cancellation, as of the date of the judgment, of all taxes current and delinquent * * *."

If the taking had been on July 10, 1955 for example, then all necessary elements under the section would exist. The taxes for 1955-56 would be unpaid and for that fiscal year the court would prorate to July 10, 1955. There would be payable taxes for those 10 days in July and all the remaining [174] taxes would be cancelled.

It's impossible to believe that the legislature intended this absurd result, but such is our reading of the statute. The statute however shows the general intent of the legislature to apportion taxes as of the date of taking and as such lends support to

our decision on the motion for summary judgment heretofore discussed.

The motion to strike from the answers of the County of San Diego is denied. [175]

[Endorsed]: Filed May 18, 1956.

United States District Court, Southern District
of California, Southern Division

No. 1506-SD-C Civil

UNITED STATES OF AMERICA,

Plaintiff,

v.

70.39 ACRES OF LAND, MORE OR LESS, SITUATE IN THE CITY OF SAN DIEGO,
COUNTY OF SAN DIEGO, CALIFORNIA;
CITY OF SAN DIEGO, a municipal corporation;
COUNTY OF SAN DIEGO, a body politic and corporate, et al., Defendants.

NUNC PRO TUNC FINAL JUDGMENT ON
ANSWER AND SUPPLEMENTAL ANSWER OF COUNTY OF SAN DIEGO
CLAIMING TAXES

It appearing to the Court that the Final Judgment On Answer and Supplemental Answer of County of San Diego Claiming Taxes, signed and filed by the Court July 10, 1956 and entered July 16, 1956 is not correct and does not conform to the minutes of the Court entered May 18, 1956 nor with

the Memorandum of the Court signed and filed on May 18, 1956 and that said judgment as signed and filed on July 10, 1956 contains errors arising from oversight and omission and the Court on its own initiative having on July 20, 1956 made and caused to be entered a minute order so finding and directed that the aforesaid judgment and the Findings of Fact, and Conclusions of Law supporting said judgment be [176] amended nunc pro tunc as of July 10, 1956 to make the same conform to the said Minute Order entered May 18, 1956 and said Opinion signed and filed May 18, 1956 and directing that Amended Findings of Fact, Conclusions of Law and Judgment be drawn for the aforesaid purpose.

It Is Hereby Ordered, Adjudged and Decreed that the said Findings of Fact, Conclusions of Law and Judgment signed and filed July 10, 1956 and entered July 16, 1956 be and the same is hereby corrected and amended nunc pro tunc as of July 10, 1956 to conform to the actual opinion announced and rendered by the Court on May 18, 1956 and the said Minute Order of the Court entered May 18, 1956, said amended Findings of Fact, Conclusions of Law and Judgment to read as follows:

This cause coming on to be heard the 12th day of April, 1956, at the hour of 10:00 o'clock A.M., before Honorable James M. Carter, United States District Judge, at San Diego, California, pursuant to the Order to Show Cause issued upon Motion of plaintiff United States of America, filed March 19, 1956, and the Motion of defendants Charles W. Carlstrom, also known as C. W. Carlstrom, The

Salvation Army, a California corporation, The Salvation Army, a New York corporation, the Southern California District Council of the Assemblies of God, Inc., a non-profit corporation, and the Southern California Children's Aid Foundation, Inc., a non-profit corporation, for an order to strike paragraph 3 of the Answer of said County of San Diego filed August 10, 1955 and paragraph 1 of the Supplemental Answer of said defendant filed January 3, 1956, which said Motion to Strike was joined in at said hearing by Defendant, Midway [177] Properties, and it having been stipulated by the City of San Diego and the County of San Diego, through their respective counsel, that if one defendant owner was entitled to relief under said Motion to Strike that the same relief should inure to the benefit of all defendants who have a fee interest in the property being condemned by plaintiff in this action, the plaintiff being represented by Laughlin E. Waters, United States Attorney, and George F. Hurley, Assistant United States Attorney, and the County of San Diego appearing by James Don Keller, District Attorney and County Counsel for the County of San Diego, and Duane J. Carnes, Deputy County Counsel, who appeared also for and on behalf of the Board of Supervisors of said county, and in their official capacities as officers of said county, and the City of San Diego appearing by Jean F. DuPaul, City Attorney, and Robert T. Sjogren, Deputy City Attorney, and appearing also defendant Charles W. Carlstrom, personally and by Hill, Farrer and Burrill, by Stanley S. Burrill and

Albert J. Day, his attorneys, Midway Properties Company, a limited partnership, by Levenson, Levenson and Block, by Eli Levenson, their attorneys, and Ace Van and Storage Company, Inc., by Eli Levenson, who appeared upon this motion for its attorneys, Southern California Children's Aid Foundation and Southern California District Council of the Assemblies of God, Inc., by Paul, Hastings and Janofsky, by Leonard S. Janofsky, their attorneys, The Salvation Army, a New York corporation, and The Salvation Army, a California corporation, by Rubin and Seltzer, [178] by Norman T. Seltzer, their attorneys, Lyon Van and Storage Company, a corporation, by Gray, Cary, Ames and Frye, by Alfred Lord, its attorneys, and General Dynamics Corporation, Convair Division, by Thomas J. Moran, its attorney, and it appearing to the Court that all parties interested in said motion of plaintiff and said motion to strike of said defendants have been duly and properly notified of the pendency of this hearing, and the cause having been submitted to it by the parties upon such Answer, Supplemental Answer, and the Motion of plaintiff, together with affidavits in support thereof with respect thereto, and upon such Motion to Strike of said defendants, and the Court having examined the records on file in this case, including said Answer and Supplemental Answer of defendant County of San Diego and the affidavits attached to the said Motion of the plaintiff for cancellation of the taxes described in said Supplemental Answer and Motion to Strike, the Court proceeded to hear

the statements of counsel and to consider the evidence in support of said Motion, and it appearing to the Court from said Motion of the plaintiff, and the affidavits and verified pleadings attached thereto, and the answers and memoranda of the parties filed herein, and said Motion to Strike of said defendants, that there is no dispute, issue or controversy among the parties as to the facts involved in the matters and issues presented by said respective Motions, and the Court having heard the arguments of counsel and being fully informed in the premises, and the cause having been submitted to the Court for determination and the Court having filed, on May 18, 1956, its memorandum [179] upon the matter so submitted, and this cause having come on further to be heard on the date hereof, upon the Motion of plaintiff for the entry of Final Judgment pursuant to Rules 54(b) and 56 of the Federal Rules of Civil Procedure and pursuant to the direction of the Court in its said Memorandum filed May 18, 1956, now, upon application by plaintiff for summary judgment in accordance with the terms and conditions as set forth by the Court in its said memorandum, and the Court, having determined that due notice of this hearing has been given all parties first above named being present, the Court having again heard counsel and being fully informed in the premises, makes the following

Findings of Fact

I.

That the first Monday of March in the year 1955 fell on March 7, 1955.

II.

The United States of America acquired the full fee simple title to all of the property involved in this controversy on June 16, 1955, by filing its Declaration of Taking on said date.

III.

That on June 20, 1955, the United States of America recorded its Declaration of Taking of the property subject to said 1955-1956 general taxes in conformity with the laws of the State of California governing the recording of documents evidencing title to real property;

That the certified copy of said Declaration of Taking, filed as aforesaid, disclosed the date of [180] acquisition of the property acquired and the public purpose for which said property was being acquired.

IV.

That on November 4, 1955, following the filing of Supplemental Answer of defendant County of San Diego, the plaintiff United States of America, in pursuance of the provisions of Sections 4986 and 4986.2 of the Revenue and Taxation Code of the State of California, made application to the Board of Supervisors of the County of San Diego for cancellation of the current taxes for the fiscal year 1955-1956;

That said application duly and fully showed upon its face that it was made after lien date for the taxes described by reference to the Declaration of Taking and for a public use which would exempt said

property from taxation under United States laws;

That said application was duly received by the Board of Supervisors of San Diego County, and was referred to the District Attorney of San Diego County for consent to the granting of same.

V.

That the said Board of Supervisors of San Diego County, on January 10, 1956, denied the petition of the plaintiff for cancellation of said taxes.

VI.

That on March 7, 1955, and continuously from said date, there was in full force and effect Article XIII of the Constitution of the State of California, Section 1 of which reads, in part, as follows:

“All property in the state except as otherwise in this Constitution provided not exempt under the laws of the United States, should be taxed [181] in proportion to value * * *”

and Section 8 of which reads, in part, as follows:

“The legislature shall, by law, require each taxpayer in this state to make and deliver to the County Assessor annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at 12 o'clock meridian on the first Monday of March.”

The provisions of said Constitution above-quoted have not been amended, modified or repealed since March 7, 1955.

VII.

That on March 7, 1955, and continuously thereafter to and including the date hereof, there have been in full force and effect Sections 2192, 4986 and 4986.2, of the Revenue and Taxation Code of the State of California, which sections read as follows:

§ 2192. Time of Attachment of Liens.

All Tax Liens attach annually as of noon on the first Monday in March preceding the fiscal year for which the taxes are levied.

§ 4986. Cancellation of Taxes, Etc.: Authority to Cancel: "Property Acquired" Defined: Consent of City Attorney: Cancellation Under Sub-paragraph (g).

All or any portion of any uncollected tax, penalty, or costs, heretofore or hereafter levied, may, on satisfactory proof, be canceled by the auditor on [182] order of the board of supervisors with the written consent of the district attorney if it was levied or charged.

* * * (f) On property acquired after the lien date by the United States of America if such property, upon such acquisition, becomes exempt from taxation under the laws of the United States.

No cancellation under subparagraphs * * * (f) * * * of this section shall be made in respect of all or any portion of any taxes, penalties or costs attached thereto, collectible by county officers on behalf of a municipal corporation, without the written consent of the city attorney thereof.

§ 4986.2 Same: City Taxes: Procedure. All or

any portion of uncollected city taxes, penalties or costs may be cancelled on any of the grounds specified in Section 4986. If the city taxes are collected by the county, the procedure outlined in Section 4986 for the cancellation of taxes, penalties, or costs, shall be followed, except that the consent of the city attorney, in lieu of the consent of the district attorney, is necessary before cancellation * * *.

The provisions of the statutes above quoted have not been amended, modified or repealed since March 7, 1955. [183]

VIII.

That at all times herein mentioned the tax fiscal year commenced on the first day of July.

IX.

That on June 16, 1955 there was in full force and effect Section 1252.1 of the California Code of Civil Procedure reading as follows:

“1252.1 (Taxes, penalties, costs: Computation: Payment from award.) At the time of commencement of the trial of any condemnation action in which a public agency exempt from taxes is the plaintiff, the clerk of the court shall serve upon the officer or officers responsible for the computation of all ad valorem taxes on the property being condemned, written notice to prepare and file with the clerk of the court a certificate of all delinquent taxes, penalties and costs, and of all current taxes, due and payable on said property as of the date said notice was served. There shall be filed by the clerk with the court, as part of the records in said action,

a copy of said written notice with the acknowledgment of service and the date thereof endorsed thereon by the officer so served. For the purposes of this section, the term taxes shall include ad valorem special assessments levied and collected in the same manner as other taxes. In the event said notices are served at a time when the amount of the current taxes, which are a lien on the property but not yet payable, are not known to the certificating officers, said certificates shall [184] contain, in lieu of a statement of the current taxes, a statement based on (1) the assessed value for the current year of the property being condemned, and (2) the tax rate for the previous fiscal year. Said certificates shall be filed with the clerk of the court, as a part of the records and files of said condemnation action, within 10 days after the service of said notices, and in the event of failure on the part of any officer upon whom such notice is served to file said certificates within said time, it shall be conclusively presumed that as to the taxes for the collection of which such officer is responsible, no taxes are due and payable on said property, or in any manner constitute a lien thereon.

Before making any final order of condemnation in such action, the court shall determine whether said certificates have been filed by all officers upon whom the notices have been served. If said certificates have been filed, the court shall as a part of the judgment direct the payment to the tax collecting agencies, out of the award, the amounts of the delinquent taxes, penalties and costs, and the

amounts of the current taxes, shown by said certificates to be due and payable. In the event said certificates show that the amounts of the current taxes which are a lien are not known, and in lieu of the statement of current taxes contain a statement based on the assessed value for the current year and the tax rate for the previous year, the court shall [185] in lieu of directing the payment of current taxes order the payment of sums bearing the same relation to the amounts shown in said statements as the portion of the current fiscal year from the commencement thereof to the date of the final order of condemnation bears towards an entire fiscal year; provided, that in the event an order permitting the plaintiff to take immediate possession was entered in such action, prior to the payment of any taxes for the fiscal year during which said order was entered, the court shall, for such fiscal year, order the payment of a sum bearing the same relation to the amount of the taxes for such fiscal year, or in the event said amount is not known, to the amount shown in said statement based on the assessed value for the current year and the tax rate for the previous year, as the portion of such fiscal year from the commencement thereof to the date of entry of such order of immediate possession bears towards an entire fiscal year.

In any such action, the payment of the sums ordered by the court to be paid shall be considered to be in lieu of all taxes, current and delinquent, and all penalties and costs, due and payable with respect to the property being condemned, and said

judgment shall, in addition to ordering said payments, order the cancellation, as of the date of the judgment, of all taxes, current and delinquent, and all penalties and costs, on said property. Said judgment shall be conclusively binding on all tax collecting [186] agencies upon which the notices were duly served by the clerk of the court.

The subject of the amount of the taxes which may be due on any property shall not be considered relevant on any issue in any such condemnation action, and the mention of said subject, either in the voir dire examination of jurors, or during the examination of witnesses, or as a part of the court's instructions to the jury, or in argument of counsel, or otherwise, shall constitute grounds for a mistrial in any such action. (Added by Stats. 1953, ch. 1792, § 1.) (Repealed by Stats. 1955, ch. 1229, § 1, effective September 7, 1955.)

X.

The Court expressly finds and determines that there is no just reason for delay in entering a final judgment upon the claims of the County of San Diego for and on behalf of itself, the City of San Diego and school district for taxes as set forth in its said answer and supplemental answer and the objections thereto by plaintiff and said defendants. That said claim for taxes and objections thereto are suitable for final judgment within the provisions of Section 54(b) of Federal Rules of Civil Procedure and constitutes one of several claims within the meaning of said section but does not constitute all the claims in the above-entitled proceedings.

And, from such findings of fact, the court makes the following [187]

Conclusions of Law

I.

That this court has jurisdiction of the parties hereto by their appearances in this action and of the subject matter of this controversy by virtue of the provisions of the Constitution of the United States of America, Title 28, U.S.C., and Title 40, U.S.C., Section 258a.

II.

That the legal effect of the provisions of the Constitution of the State of California in force and effect at the time the plaintiff made its said application for cancellation of taxes, and also of Sections 2192, 4986 and 4986.2, of the Revenue and Taxation Code of said state, was to establish in said plaintiff the right to relief prayed for in its Motion.

III.

That the petition of the plaintiff for cancellation of the current taxes for the fiscal year 1955-1956, was drawn in due form of law and was fair on its face and fully complied by its terms with the provisions of the Constitution of the State of California.

IV.

That the property acquired by the United States by its Declaration of Taking and deposit into the registry of the estimated compensation, as provided by Section 258a of Title 40 of the United States

Code, was for, and in aid of, the national defense, and was a use which exempted it from taxation under United States law.

V.

That the Board of Supervisors of the County of San [188] Diego acted wrongfully and without authority of law, and in contravention of the duty imposed upon it by the statutes of the State of California in refusing to grant said petition of plaintiff for cancellation of the taxes.

VI.

That the City of San Diego, having appeared in this action and ratifying the acts of the Board of Supervisors in the premises, is not entitled to assert any rights with respect to said taxes other than those asserted by the said County of San Diego, by and through its District Attorney and County Counsel, and the said County of San Diego, having appeared in this action by filing its Answer and Supplemental Answer, and having participated in the hearing with respect to the issues raised by said Answer and Supplemental Answer, is bound by the judgment to be entered hereon, and the court has jurisdiction of said defendants City of San Diego, County of San Diego, the Board of Supervisors of said County of San Diego, and the City Attorney of the City of San Diego in their official capacities and may, therefore, enter judgment (1) against them, and each of them, upon said Answer and Supplemental Answer, and upon the Motion of

the plaintiff United States of America for cancellation of the 1955-1956 general taxes, and (2) in favor of the County of San Diego as to the delinquent taxes in the amount of \$54.23, against Tract A-100, as described in the Supplemental Answer of the defendant County of San Diego, which the parties agree may be paid out of the deposit.

VII.

That the legal effect of cancellation of the [189] general taxes on application of the United States of America is to extinguish the lien of the general taxes for all purposes and bar recovery thereof by the County of San Diego, either by sale of the land described in its said Answer and Supplemental Answer, or by attachment of the fund on deposit in the registry of the court, or by legal process against plaintiff or any of the defendant owners on March 7, 1955 or the successors in interest thereof.

That the plaintiff and all parties defendant in the above action who had interests at date of taking in any of the property described in the defendant County of San Diego's Answer and Supplemental Answer are entitled to judgment that said County of San Diego take nothing by its said Answer and Supplemental Answer and barring any recovery against the said real property or the fund now on deposit in the registry of the court, or any additional funds deposited on account of just compensation for the property taken in condemnation by this action, or against the interests of any of the defendants to this action in said deposited fund,

as aforesaid, or against the said defendants or any of them personally or otherwise, to recover any portion of the taxes alleged to be due in and by the said Answer and Supplemental Answer, except, however, that the said defendant County of San Diego shall be entitled to judgment for the sum of \$54.23, which is the amount of delinquent taxes against Tract A-100, as set forth in its said Answer and Supplemental Answer.

VIII.

The Court concludes that the said defendants are not entitled to relief under the provision of Section [190] 1252.1 of the California Code of Civil Procedure.

IX.

The Court expressly determines pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay in entering a final judgment on the said claims of the County of San Diego and the said objections thereto and expressly directs the entry of a final judgment upon said claims and objections thereto.

Now, Therefore, upon the foregoing Findings of Fact and Conclusions of Law

It Is Hereby Ordered, Adjudged and Decreed

I.

That judgment be, and the same is, hereby entered in favor of the County of San Diego upon its Answer and Supplemental Answer, in the sum of \$54.23, being the amount of the delinquent taxes levied against Tract A-100 as the same is described

in the Second Amendment to First Amended Complaint in Condemnation, and the clerk of this court is hereby directed to disburse, from funds on deposit in the registry of this court, the said sum of \$54.23, to the County of San Diego, as collector of taxes for said County of San Diego and the said City of San Diego, for distribution by it in the manner provided by the laws of the State of California.

II.

That judgment be, and the same is, hereby entered against the County of San Diego and in favor of plaintiff and the other defendants above named, that it, the said County of San Diego, taking nothing by this action with respect to the claim filed by it for taxes for the fiscal year 1955-1956, as set forth in its said Answer [191] and Supplemental Answer, and the plaintiff and all of the defendants above named shall go hence with respect to said claim, without day, free and clear of all claims, demands or charges of any nature, character or description whatsoever, which the said defendant County of San Diego could or might assert against said plaintiff and said defendants on account of said taxes, or against the property identified and described in the Declaration of Taking on file in this action, or against the funds on deposit in the registry of this court, or to be hereafter deposited, as described above; and the rights and interests of all of the defendants to this action having any interest in said deposits into the registry of the court made pursuant to any judgment in this court

fixing just compensation, are free and clear of all claims, demands or charges of any nature, character or description whatsoever, which the defendant County of San Diego could or might assert against said defendants, or any of them, or against their respective shares of the aforesaid deposits into the registry of the court, or against the avails of any judgment in their favor fixing just compensation for the condemnation and taking of their interests in the real estate identified and described in the said Second Amendment to First Amended Complaint in Condemnation and in the Declaration of Taking on file in this action.

III.

That the said motion of defendants to strike portions of the Answer and Supplemental Answer of the County of San Diego is hereby denied.

IV.

The Court hereby expressly orders and directs [192] the entry of the within final judgment upon the said claims of the County of San Diego and the objections thereto.

V.

That these Findings of Fact, Conclusions of Law and Final Judgment be made nunc pro tunc as of July 10, 1956.

Dated: This 25th day of July, 1956, nunc pro tunc as of July 10, 1956.

/s/ JAMES M. CARTER,
United States District Judge.

Presented by:

LAUGHLIN E. WATERS,
United States Attorney,
JOSEPH F. MCPHERSON,
GEORGE F. HURLEY,
Assistant U. S. Attorneys,
/s/ By GEORGE F. HURLEY,
Attorneys for Plaintiff.

[Endorsed]: Filed July 25, 1956. Docketed and
Entered July 26, 1956. [193]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that County of San Diego and City of San Diego, defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the nunc pro tunc final judgment on Answer and Supplemental Answer of County of San Diego claiming taxes entered in this action on July 26, 1956 nunc pro tunc as of July 10, 1956.

JAMES DON KELLER,
District Attorney,
/s/ By DUANE J. CARNES,
Deputy,
/s/ By CARROLL H. SMITH,
Deputy,

JEAN F. DuPAUL,
City Attorney,

/s/ By ROBERT T. SJOGREN,
Deputy,

Attorneys for County of San Diego
and City of San Diego. [194]

Affidavit of Service by Mail Attached. [195]

[Endorsed]: Filed Aug. 22, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Charles W. Carlstrom, also known as C. W. Carlstrom, Southern California Children's Aid Foundation, Inc., a California non-profit corporation, Southern California District Council of the Assemblies of God, Inc., a non-profit corporation, The Salvation Army, a California corporation, and The Salvation Army, a New York corporation, and each of them, defendants above named, hereby jointly appeal to the United States Court of Appeals for the Ninth Circuit from that portion of the Nunc Pro Tunc Final Judgment on Answer and Supplemental Answer of County of San Diego Claiming Taxes, entered in the above entitled action on July 26, 1956 nunc pro tunc as of July 10, 1956, appearing in paragraph III on page 17, lines 28 to 31 inclusive of said judgment, adjudicating and decreeing that said defendants, and each of them, are not entitled to relief under

the provisions of Section 1252.1 of the California Code of Civil Procedure, and denying the motion of said defendants, and each of them, to strike portions of the Answer and Supplemental Answer of the County of San Diego.

Dated: This 31st day of August, 1956.

HILL, FARRER & BURRILL,

/s/ By ALBERT J. DAY,

Attorneys for Charles W. Carlstrom.

PROCOPIO, PRICE, CORY &
SCHWARTZ,

PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for Children's Aid. [197]

PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for Assemblies.

RUBIN & SELTZER,

/s/ By NORMAN T. SELTZER,

Attorneys for The Salvation Army.

Affidavit of Service Attached. [199]

[Endorsed]: Filed Sept. 5, 1956. [198]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

Appellants herein state as their points on appeal the following:

1. The trial court erred in denying taxing agencies any recovery in an action where the taxes be-

came a lien as of the first Monday in March, 1955, the United States took title June 16, 1955 and where there has not at this date been a payment out of the deposit in court.

2. The trial court erred in construing California Revenue and Taxation Code Section 4986 as giving the United States the right to compel a cancellation not only of taxes of record against real property but also to defeat the right of taxing [201] agencies to payment of their tax demands out of deposits in court in a condemnation proceeding.

3. The trial court erred in holding that the United States has a sufficient or any interest in the deposit in court in a condemnation award to enable it to intervene in a dispute between the defendants as to ownership or beneficial rights in such fund.

JAMES DON KELLER,

District Attorney,

/s/ By DUANE J. CARNES,

Deputy,

/s/ By CARROLL H. SMITH,

Deputy,

JEAN F. DuPAUL,

City Attorney,

/s/ By ROBERT T. SJOGREN,

Deputy,

Attorneys for County of San
Diego and City of San Diego.

[Endorsed]: Filed Sep. 5, 1956.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

To the Clerk of the Above Entitled Court:

Defendants and appellants, County of San Diego and City of San Diego hereby request that the following portions of the Clerk's file be set forth in the record on appeal.

- (1) First Amended Complaint in Condemnation.
- (2) Answer of County of San Diego (filed August 10, 1955).
- (3) Supplemental Answer of County of San Diego.
- (4) Motion of Plaintiff for a Rule to Show Cause Directed to the District Attorney and the Board of Supervisors of San Diego County, and the City Attorney of the City of San Diego, with respect to cancellation of taxes, or, in the alternative, for summary judgment that said County take nothing by its answer. [203]
- (5) Memorandum Decision (filed May 18, 1956).
- (6) Nunc pro tunc Final Judgment on Answer and Supplemental Answer of County of San Diego Claiming Taxes.
- (7) Notice of Appeal.

(8) Statement of Points on Appeal.

JAMES DON KELLER,

District Attorney,

/s/ By DUANE J. CARNES,

Deputy,

/s/ By CARROLL H. SMITH,

Deputy,

JEAN F. DU PAUL,

City Attorney,

/s/ By ROBERT T. SJOGREN,

Deputy,

Attorneys for County of San
Diego and City of San Diego.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Sep. 5, 1956.

[Title of District Court and Cause.]

DESIGNATION BY PLAINTIFF OF ADDITIONAL CONTENTS OF RECORD ON APPEAL

To the Clerk of the above-entitled Court:

Plaintiff and appellee, the United States of America, hereby requests that the following portions of the clerk's file, in addition to the portions designated by defendants and appellants, County of San Diego and City of San Diego, filed August 31, 1956, be set forth in the record on appeal:

1. Amendment to First Amended Complaint filed August 23, 1955;

2. Declaration of Taking filed June 16, 1955.

LAUGHLIN E. WATERS,

United States Attorney,

JOSEPH F. McPHERSON,

GEORGE F. HURLEY,

Assistant U. S. Attorneys,

/s/ By GEORGE F. HURLEY,

Attorneys for Plaintiff United

States of America. [205]

Affidavit of Mailing attached. [206]

[Endorsed]: Filed Sep. 13, 1956.

[Title of District Court and Cause.]

DESIGNATION BY DEFENDANTS AND APPELLANTS OF ADDITIONAL CONTENTS OF RECORD ON APPEAL

To the Clerk of the above entitled Court:

Defendants and appellants Charles W. Carlstrom, also known as C. W. Carlstrom, Southern California Children's Aid Foundation, Inc., a California non-profit corporation, Southern California District Council of the Assemblies of God, Inc., a non-profit corporation, The Salvation Army, a California corporation, and The Salvation Army, a New York corporation, and each of them, hereby requests that the following portions of the Clerk's file (in addition to the portions designated by defendants and appellants County of San Diego and City of San Diego, filed August 31, 1956, and in addition to the

portions designated by plaintiff and appellee, the United States of America, filed on or about September 14, 1956) be set forth in the record on appeal:

1. Motion to Strike of the above named defendants and appellants, which said Motion was filed April 12, 1956, together with points and authorities in support of said Motion attached thereto and filed concurrently therewith.

Dated: This 18th day of September, 1956.

HILL, FARRER & BURRILL,

/s/ By STANLEY S. BURRILL,

Attorneys for Charles W. Carlstrom.

PROCOPIO, PRICE, CORY &
SCHWARTZ,

PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for Children's Aid.

PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for Assemblies.

RUBIN & SELTZER

/s/ By NORMAN T. SELTZER, Per B.

Attorneys for The Salvation
Army. [208]

Affidavit of Mailing attached.

[Endorsed]: Filed Sep. 19, 1956.

[Title of District Court and Cause.]

CONCISE STATEMENT OF POINTS ON APPEAL

Appellants and defendants, C. W. Carlstrom, Southern California Children's Aid Foundation, Inc., a California non-profit corporation, Southern California District Council of the Assemblies of God, Inc., a non-profit corporation, The Salvation Army, a California corporation, and The Salvation Army, a New York corporation, and each of them, herein state as their concise points on which they intend to rely on appeal the following:

1. Where the record is undisputed that title and possession to the real property being condemned herein passed to the United States of America upon the filing of the Declaration of Taking on June 16, 1955, the Trial Court erred in holding that the language and intent of Section 1252.1 of the California Code of Civil Procedure did not require the cancellation of county and city ad valorem taxes on said real property for the fiscal year commencing after the filing of said Declaration of Taking, i. e. commencing July 1, 1955, even though said taxes became a lien on the said property on March 7, 1955.

2. The Trial Court erred in decreeing that the defendant property owners are not entitled to relief under the provisions of Section 1252.1 of the California Code of Civil Procedure in denying said defendants' Motion to Strike from the Answer of the County of San Diego the claims relating to taxes

for the fiscal year commencing subsequent to the passage of title and possession to the United States of America.

Dated: This 18th day of September, 1956.

HILL, FARRER & BURRILL,

/s/ By STANLEY S. BURRILL,

Attorneys for C. W. Carlstrom.

PROCOPIO, PRICE, CORY &

SCHWARTZ and PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for Children's Aid.

PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for Assemblies.

RUBIN & SELTZER,

/s/ By NORMAN T. SELTZER, Per B.,

Attorneys for The Salvation Army.

Affidavit of Mailing Attached.

[Endorsed]: Filed Sep. 19, 1956.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 217, inclusive, contain the original

First Amended Complaint in Condemnation;

Declaration of Taking;

Answer and Appearance of defendant County of San Diego to first amended complaint;

Amendment to First Amended Complaint in Condemnation;

Supplemental Answer of defendant County of San Diego;

Motion of Plaintiff for a Rule to Show Cause Directed to the District Attorney and the Board of Supervisors of San Diego County, and the City Attorney of the City of San Diego, with Respect to Cancellation of Taxes, or, in the Alternative, for summary judgment that said County take Nothing by its Answer;

Motion to Strike by defendants Carlstrom, et al., with points and authorities in support;

Memorandum;

Nunc Pro Tunc Final Judgment on Answer and Supplemental Answer of County of San Diego Claiming Taxes;

Notice of Appeal by defendants County of San Diego and City of San Diego;

Notice of Appeal by defendants Carlstrom, et al.;

Statement of Points on Appeal by defendants County of San Diego and City of San Diego;

Designation of Contents of Record on Appeal by defendants County of San Diego and City of San Diego;

Designation by Plaintiff of Additional Contents of Record on Appeal;

Designation by defendants and appellants (Carlstrom, et al.) of additional contents of Record on Appeal;

Concise Statement of Points on Appeal by defendants Carlstrom, et al.;

Order Extending Time for Filing Record on Appeal and Docketing Appeal;

which constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above entitled case.

I further certify that my fees for preparing the foregoing record amount to \$1.60, which sum has been paid by appellant County of San Diego.

Witness my hand and seal of the said District Court this 6th day of November, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk,

/s/ By E. M. ENSTROM, JR.,
Deputy Clerk.

[Endorsed]: No. 15352. United States Court of Appeals for the Ninth Circuit. County of San Diego and City of San Diego, Appellants, vs. United States of America, Appellee. Charles W. Carlstrom, Southern California Children's Aid Foundation, Inc., a corporation, Southern California District Council of The Assemblies of God, Inc., a corporation and The Salvation Army, Appellants, vs. County of San Diego, Appellee. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Southern Division.

Filed: November 7, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15352

United States of America, Plaintiff, vs. 70.39 Acres of Land, More or Less, Situate in the City of San Diego, County of San Diego, California; County of San Diego, a political subdivision of the State of California, and The City of San Diego, a municipal corporation, et al., Defendants.

Charles W. Carlstrom, also known as C. W. Carlstrom, Southern California Children's Aid Foundation, Inc., a California non-profit corporation, Southern California District Council of the Assemblies of God, Inc., a non-profit corporation, The Salvation Army, a California corporation, and The Salvation Army, a New York corporation, Cross Appellants and Appellees, vs. County of San Diego, a political subdivision of the State of California, and The City of San Diego, a municipal corporation. Appellants and Cross Appellees.

CONCISE STATEMENT OF
POINTS ON APPEAL

Now come Charles W. Carlstrom, also known as C. W. Carlstrom, Southern California Children's Aid Foundation, Inc., a California non-profit corporation, Southern California District Council of The Assemblies of God, Inc., a non-profit corporation, The Salvation Army, a California corporation, and

The Salvation Army, a New York corporation, Cross Appellants and Appellees, and adopt the Concise Statement of Points on Appeal, filed in the District Court and appearing at page 211 of the original certified typewritten Record on Appeal herein as the Concise Statement of Points on Appeal upon which they intend to rely on this appeal.

Dated: November 14, 1956.

HILL, FARRER & BURRILL,

/s/ By STANLEY S. BURRILL,

Attorneys for Charles W. Carlstrom.

PROCOPIO, PRICE, CORY &

SCHWARTZ,

PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for Children's Aid.

PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for Assemblies.

RUBIN & SELTZER,

/s/ By NORMAN T. SELTZER,

Attorneys for The Salvation Army.

Affidavit of Mailing attached.

[Endorsed]: Filed Nov. 15, 1956. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

DESIGNATION OF ADDITIONAL CONTENTS OF RECORD ON APPEAL

Now come Charles W. Carlstrom, also known as C. W. Carlstrom, Southern California Children's Aid Foundation, Inc., a California non-profit corporation, Southern California District Council of The Assemblies of God, Inc., a non-profit corporation, The Salvation Army, a California corporation, and The Salvation Army, a New York corporation, Cross Appellants and Appellees, and adopt the Designation by Defendants and Appellants of Additional Contents of Record on Appeal, filed in the District Court and appearing at page 207 of the original certified typewritten Record on Appeal herein, as the additional Designation of the Record which is material to the consideration of this Appeal and Cross Appeal.

In addition to the foregoing said Cross Appellants and Appellees request the Clerk of the above entitled Court to cause to be printed as part of the record the following additional documents.

- (1) Concise Statement of Points on Appeal.
- (2) Designation of Additional Contents of Record on Appeal.

Dated: November 14, 1956.

HILL, FARRER & BURRILL,
/s/ By STANLEY S. BURRILL,
Attorneys for Charles W. Carlstrom.

PROCOPIO, PRICE, CORY &
SCHWARTZ,

PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for Children's Aid.

PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for Assemblies.

RUBIN & SELTZER,

/s/ By NORMAN T. SELTZER,

Attorneys for The Salvation Army.

Affidavit of Mailing attached.

[Endorsed]: Filed Nov. 15, 1956. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON APPEAL

To the Clerk of the above entitled Court:

Defendants and appellants, County of San Diego
and The City of San Diego, hereby adopt as State-
ment of Points on Appeal that statement heretofore
filed by them in the United States District Court
and which is contained in the transcript of record.

JAMES DON KELLER,

District Attorney,

/s/ By DUANE J. CARNES,

Deputy,

/s/ By CARROLL H. SMITH,

Deputy,

JEAN F. DuPAUL,
City Attorney,
/s/ By ALAN M. FIRESTONE,
Deputy,
Attorneys for County of San
Diego and The City of San
Diego.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD

To the Clerk of the above entitled Court:

Defendants and appellants, County of San Diego and The City of San Diego, hereby adopt as Designation of Contents of Record on Appeal that designation heretofore filed by them in the United States District Court and which is contained in the transcript of record.

JAMES DON KELLER,
District Attorney,
/s/ By DUANE J. CARNES,
Deputy,
/s/ By CARROLL H. SMITH,
Deputy,
JEAN F. DuPAUL,
City Attorney,
/s/ By ALAN M. FIRESTONE,
Deputy,
Attorneys for County of San
Diego and The City of San
Diego.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Nov. 15, 1956. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STIPULATION RE OWNERSHIP

Whereas, The United States of America, The County of San Diego, a body politic and corporate, The City of San Diego, a municipal corporation, Charles W. Carlstrom, also known as C. W. Carlstrom, The Southern California Children's Aid Foundation, Inc., a California non-profit corporation, The Southern California District Council of The Assemblies of God, Inc., a non-profit corporation, The Salvation Army, a California corporation, and The Salvation Army, a New York corporation, and each of them, desire to delete from the joint Record on Appeal in the above entitled matter the property descriptions and the list of the owners or persons claiming interest in the property sought to be condemned for the purpose of reducing the record and saving expense; and

Whereas, the ownership of various parcels is in conflict and the United States District Court, Southern District of California, Southern Division, has made and will hereinafter make various rulings in connection with said ownership; and

Whereas, this appeal is taken from the Nunc Pro Tunc Final Judgment on Answer and Supplemental Answer of County of San Diego Claiming Taxes, entered on July 26, 1956 nunc pro tunc as of July 10, 1956, and is solely concerned with the cancellation of the taxes for the fiscal year 1955-1956 upon the property condemned; and

Whereas, it is the desire of said parties, and each of them, in order to perfect the joint record on appeal, to stipulate for the purpose of said appeal only as to the ownership of the various parcels whereon said taxes were cancelled, without, however, waiving the position of said parties, or any of them, as to their various contentions concerning the ownership of said parcels or their right to subsequently appeal from any ruling or rulings hereinbefore or hereinafter made by said United States District Court subsequent to said Nunc Pro Tunc Final Judgment on Answer and Supplemental Answer of County of San Diego Claiming Taxes, as to the ownership of said parcels.

Now, Therefore, It Is Hereby Stipulated by and between The United States of America, The County of San Diego, a body politic and corporate, The City of San Diego, a municipal corporation, Charles W. Carlstrom, also known as C. W. Carlstrom, The Southern California Children's Aid Foundation, Inc., a California non-profit corporation, The Southern California District Council of The Assemblies of God, Inc., a non-profit corporation, The Salvation Army, a California corporation, and The Salvation Army, a New York corporation, through their respective counsel, the undersigned, that for the sole purpose of this appeal from the Nunc Pro Tunc Final Judgment on Answer and Supplemental Answer of County of San Diego Claiming Taxes the following parties shall be deemed, at all times material to the determination of this appeal, the fee own-

ers of the parcels set forth above their names, as follows:

Ownership Tract A-101: The Salvation Army, a California corporation, and The Salvation Army, a New York corporation, each an undivided one-half interest.

Ownership Tract A-102: The Southern California District Council of the Assemblies of God, Inc., whose ownership includes the underlying fee to the In-Plant Road.

Ownership Tract A-106: Consolidated Vultee Aircraft Corporation or The Southern California District Council of the Assemblies of God, Inc., an undivided 14/20s interest, The Salvation Army, a California corporation, an undivided 3/20s interest and The Salvation Army, a New York corporation, an undivided 3/20s interest.

Ownership Tract A-107: The Southern California Children's Aid Foundation, Inc., a California non-profit corporation.

Ownership Tract A-108: The Salvation Army, a California corporation.

Ownership Tract A-109: Charles W. Carlstrom, also known as C. W. Carlstrom.

Ownership Tract A-110: The Salvation Army, a California corporation, and The Salvation Army, a New York corporation, are the owners of an undivided $\frac{1}{2}$ interest in that portion adjacent to the northeasterly side of Tract A-101, and Charles W. Carlstrom, also known as C. W. Carlstrom, is the owner of the portion adjacent to the northeast side of Tract A-109.

Ownership Tract A-111: The Salvation Army, a California corporation, and The Salvation Army, a New York corporation, are the owners of an undivided $\frac{1}{2}$ interest in that portion adjacent to the northeast side of Tract A-101, and the Southern California District Council of the Assemblies of God, Inc. as to the portion adjacent to the northeast side of Tract A-102.

Ownership Tracts A-112 to A-118: The Southern California District Council of the Assemblies of God, Inc.

Ownership Tracts A-120 and A-121: The Southern California District Council of the Assemblies of God, Inc. is the owner of an undivided 14/20s interest, The Salvation Army, a California corporation, is the owner of an undivided 3/20s interest, and The Salvation Army, a New York corporation, is the owner of an undivided 3/20s interest.

Main Utility and Service Lines, Firehouse and Firehouse Facilities and Transformer Bank Facilities and Equipment: Southern California District Council of the Assemblies of God, Inc. an undivided 14/20s interest, The Salvation Army, a California corporation, an undivided 3/20s interest and The Salvation Army, a New York corporation, an undivided 3/20s interest.

Dated: February 26, 1957.

LAUGHLIN E. WATERS,
United States Attorney,
JOSEPH F. McPHERSON,
GEORGE F. HURLEY,
Assistant U. S. Attorneys,

/s/ By ROGER P. MARQUIS,
Attorney for United States of America, without
prejudice to any future question of ownership.

JAMES DON KELLER,

District Attorney,

DUANE J. CARNES,

Deputy District Attorney,

/s/ By DUANE J. CARNES

Attorneys for The County of San
Diego.

JEAN F. DuPAUL,

City Attorney,

ROBERT T. SJOGREN,

Deputy,

/s/ By ALAN M. FIRESTONE,

Attorneys for City of San Diego.

HILL, FARRER & BURRILL,

/s/ By STANLEY S. BURRILL,

Attorneys for Charles W. Carlstrom.

PROCOPIO, PRICE, CORY &
SCHWARTZ,

PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for Children's Aid.

PAUL, HASTINGS & JANOFSKY,

/s/ By LEONARD S. JANOFSKY,

Attorneys for Assemblies.

RUBIN & SELTZER,

HILL, FARRER & BURRILL,

/s/ By STANLEY S. BURRILL,

Attorneys for The Salvation Army.

[Endorsed]: Filed March 19, 1957. Paul P.
O'Brien, Clerk.

